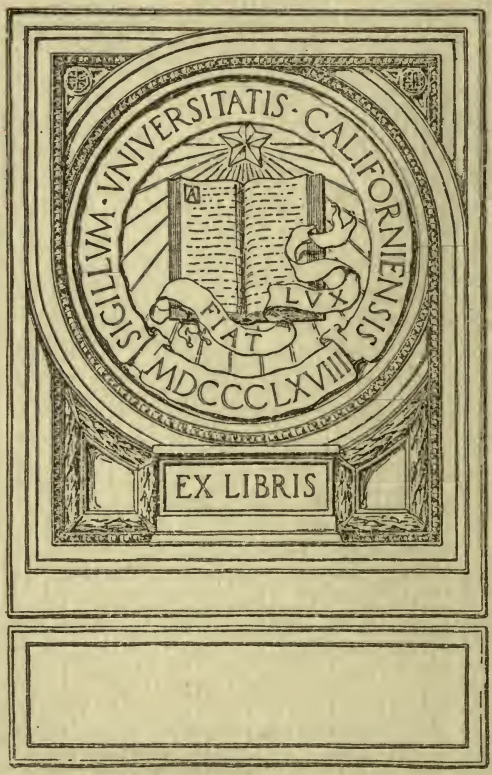
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A

TREATISE

ON THE

LAW, PRIVILEGES, PROCEEDINGS AND USAGE

OF

Parliament.

BY

SIR THOMAS ERSKINE MAY,

K.C.B., D.C.L.,

CLERK OF THE HOUSE OF COMMONS;

AND BENCHER OF THE MIDDLE TEMPLE.

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PREFACE

TO THE NINTH EDITION.

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This work has continued to expand, in each successive Edition; and the last four years have been unusually fruitful of Parliamentary incidents. It will be sufficient to mention the case of Mr. Bradlaugh, the conflicts of the House of Commons with Obstruction, the exceptional Rules of Urgency, the new Standing Orders for the regulation of Procedure, and the appointment of Standing Committees for the consideration of Bills relating to Law and Courts of Justice, and to Trade, Shipping and Manufactures. During the same period, questions of Order have also been frequent, beyond any previous experience; and many additional precedents, of earlier date, have been inserted in various parts of the work.

I gladly avail myself of this opportunity of acknowledging my obligations to many gentlemen, specially qualified to assist me,—to some of whom I am bound more particularly to allude. Mr. Speaker placed his valuable Note-Books at

my disposal. My colleagues, Mr. Palgrave and Mr. Milman, gave me the benefit of their judicious minutes of decisions from the Chair, and collections of precedents. Mr. Bull, the Clerk of the Journals, aided me with many skilful searches for precedents; and Mr. Bonham-Carter advised and assisted me in the review of cases of *locus standi* before the Court of Referees, and the practice of Committees on Private Bills.

House of Commons,
June 6th, 1883.

PREFACE TO THE FIRST EDITION.

It is the object of the following pages to describe the various functions and proceedings of Parliament, in a form adapted, as well to purposes of reference, as to a methodical treatment of the subject. The well-known work of Mr. Hatsell abounds with Parliamentary learning, and, except where changes have arisen in the practice of later years, is deservedly regarded as an authority upon all the matters of which it treats. Other works have also appeared, upon particular branches of Parliamentary practice; or with an incidental rather than direct bearing upon all of them: but no general view of the proceedings of both Houses of Parliament, at the present time, has yet been published; and it is in the hope of supplying some part of this acknowledged deficiency, that the present Treatise has been written.

A theme so extensive has only been confined within the limits of a single volume, by excluding, or rapidly passing over, such points of constitutional law and history as are not essential to the explanation of proceedings in Parliament; and by preferring brief statements of the general result of precedents, to a lengthened enumeration of the precedents themselves. Copious references are given, throughout the work, to the Journals of both houses, and to other original sources of information: but quotations have been restricted to resolutions and standing orders, to pointed authorities, and to precedents which serve to elucidate any principle or rule of practice better than a more general statement in the text.

The arrangement of the work has been designed with a view to advance from the more general to the particular and distinct proceedings of Parliament, to avoid repetition, and to prevent any confusion of separate classes of proceedings; and each subject has been treated, by itself, so as to present, first, the rules or principles; secondly, the authorities, if any be applicable; and, thirdly, the particular precedents in illustration of the practice.

It only remains to acknowledge the kind assistance which has been rendered by many gentlemen, who have communicated their knowledge of the practice of Parliament, in their several official departments, with the utmost courtesy: while the Author is under peculiar obligations to Mr. Speaker (Shaw-Lefevre), with whose encouragement the work was undertaken, and by whose valuable suggestions it has been incalculably improved.

House of Commons,
May 2, 1844.

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BOOK I.

CONSTITUTION, POWERS, AND PRIVILEGES OF PARLIAMENT.

CHAPTER I.

PRELIMINARY VIEW OF THE CONSTITUENT PARTS OF PARLIAMENT: THE CROWN, THE LORDS SPIRITUAL AND TEMPORAL, AND THE KNIGHTS, CITIZENS, AND BURGESSES; WITH INCIDENTAL REFERENCE TO THEIR ANCIENT HISTORY AND CONSTITUTION.

Introductory Remarks.

The present constitution of Parliament has been the growth of many centuries. Its origin and early history, though obscured by the remoteness of the times, and the imperfect records of a dark period in the annals of Europe, have been traced back to the free councils of our Saxon ancestors. The popular character of these institutions was subverted, for a time, by the Norman Conquest; but the people of England were still Saxons by birth, in language, and in spirit, and gradually recovered their ancient share in the councils of the State. Step by step the Legislature has assumed its present form and character; and after many changes, its constitution is now defined by—

> "The clear and written law,—the deep-trod footmarks
> Of ancient custom."

No historical inquiry has greater attractions than that which follows the progress of the British Constitution from the

earliest times, and notes its successive changes and development; but the immediate object of this work is to display Parliament in its present form, and to describe its various operations under existing laws and custom. For this purpose the history of the past will often be adverted to; but more for the explanation of modern usage, than on account of the interest of the inquiry itself. Apart from the immediate functions of Parliament, the general constitution of the British Government is not within the design of this Treatise; and however great the temptation may be to digress upon topics which are suggested by the proceedings of Parliament, such digressions will rarely be admitted. Within these bounds an outline of each of the constituent parts of Parliament, with incidental reference to their ancient history and constitution, will properly introduce the consideration of the various attributes and proceedings of the Legislature.

Constituent parts of Parliament.

The Parliament of the United Kingdom of Great Britain and Ireland is composed of the King or Queen, and the three estates of the realm, viz. the Lords Spiritual, the Lords Temporal, and the Commons. These several powers collectively make laws that are binding upon the subjects of the British empire; and as distinct members of the supreme legislature, enjoy privileges and exercise functions peculiar to each.

I. The King or Queen.

I. The Crown of these realms is hereditary, being subject, however, to special limitations by Parliament; and the kings or queens[1] have ever enjoyed various prerogatives, by prescription, custom, and law, which assign to them the chief place in Parliament, and the sole executive power. But as the collective Parliament is the supreme legislature, the right of succession and the prerogatives of the Crown itself are subject to limitations and change by the consent and

[1] For statutory confirmation of the ancient right of females to inherit the Crown, see 1 Mar. St. 2, c. 1; and 1 Mar. St. 3, c. 1; 1 Eliz. c. 3. For the form in which the accession of a Sovereign is recognized, see 92 Com. J. 488.

authority of the King or Queen for the time being, and the three estates of the realm in Parliament assembled. To the changes that have been effected, at different times, in the legal succession to the Crown, it is needless to refer, as the Revolution of 1688 is a sufficient example. The power of Parliament over the Crown is distinctly affirmed by the statute law, and recognized as an important principle of the constitution.

Coronation oath.

All the kings and queens since the Revolution have taken an oath at their coronation, by which they have "promised and sworn to govern the people of this kingdom, and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the same."[1] The Act 12 & 13 William III. c. 2, affirms "that the laws of England are the birthright of the people thereof; and all the kings and queens who shall ascend the throne of this realm ought to administer the government of the same according to the said laws; and all their officers and ministers ought to serve them respectively according to the same." And the statute 6 Anne, c. 7, declares it high treason for any one to maintain and affirm, by writing, printing, or preaching, "that the kings or queens of this realm, by and with the authority of Parliament, are not able to make laws and statutes of sufficient force and validity to limit and bind the Crown, and the descent, limitation, inheritance, and government thereof."

Limitations of prerogative.

Nor was this a modern principle of constitutional law, established, for the first time, by the Revolution of 1688. If not admitted in its whole force, so far back as the great charter of King John, it has been affirmed by Parliament in very ancient times. In the 40th Edward III. the pope had demanded homage of that monarch for the kingdom of England and land of Ireland, and the arrears of 1,000 marks a year that had been granted by King John to Innocent III. and his successors. The king laid these demands

[1] 1 Will. & Mary, c. 6. Form and Order of H. M. Coronation.

before his Parliament, and it is recorded that "The prelates, dukes, counts, barons, and commons, thereupon, after full deliberation, answered and said, with one accord, that neither the said King John, nor any other, could put himself, or his kingdom or people, in such subjection without their assent; and as it appears, by several evidences, that if this was done at all, it was done without their assent, and against his own oath on his coronation," they resolved to resist the demands of the pope with all their power.[1] From the words of this record it would appear, that whether the charter of King John submitted the royal prerogatives to Parliament or not, it was the opinion of the Parliament of Edward III. that even King John had been bound by the same laws which subsisted in their own time.[2]

The same principle had been laid down by the most venerable authorities of the English law, before the limits of the constitution had become defined. Bracton, a judge in the reign of Henry III., declared that "the king must not be subject to any man, but to God and the law, because the law makes him king."[3] At a later period, the learned Fortescue, the Lord Chancellor of Henry VI., thus explained the royal prerogative to the king's son, whose banishment he shared: "A king of England cannot, at his pleasure, make any alterations in the laws of the land, for the nature of his government is not only regal, but political." . . . "He can neither make any alteration or change in the laws of the realm without the consent of the subject, nor burthen them, against their wills, with strange impositions."[4] Later still, during the reign of Elizabeth, who did not suffer the royal prerogative to be impaired in her time, Sir Thomas Smyth affirmed that "the most high and absolute power of the realm of England consisteth in the Parliament;"[5] and then

[1] 2 Rot. Parl. 290.

[2] See also coronation oath of Edw. II. in 1307, Fœdera, vol. ii., p. 36; Book of Oaths, 1689, p. 195.

[3] Bracton, lib. 1, c. 8.

[4] De Laudibus Leg. Ang. c. 9.

[5] De Republicâ Anglorum, book 2, c. 1, by Sir Thomas Smyth, knt.

proceeded to assign to the Crown exactly the same place in Parliament as that acknowledged by statute, since the Revolution.

Not to multiply authorities, enough has been said to prove that the Revolution defined, rather than limited, the constitutional prerogatives of the king, and that the Bill of Rights[1] was but a declaration of the ancient law of England.[2]

Profession of the Protestant faith.

An important principle of constitutional law was introduced at the Revolution, by which the sovereign is bound to an adherence to the Protestant faith, and to the maintenance of the Protestant religion, as established by law. He is required to swear, at his coronation, to maintain "the true profession of the Gospel, and the Protestant reformed religion established by law."[3] By the Bill of Rights,[4] and the Act of Settlement,[5] any person professing the popish religion, or who shall marry a papist, is incapable of inheriting or possessing the Crown, and the people are absolved from their allegiance. This exclusion is further confirmed by the second article of the Act of Union with Scotland;[6] and, in addition to the coronation oath, every king or queen is required to make the declaration against the doctrines of the Roman Catholic Church prescribed by the 30th Charles II. st. 2, either on the throne in the House of Lords, in the presence of both houses, at the first meeting of the first Parliament after the accession, or at the coronation, whichever shall first happen. By similar sanctions the sovereign is also bound to maintain the Protestant religion and Presbyterian church government in Scotland.[7]

[1] "That the pretended power of suspending or dispensing with laws, or the execution of laws, without consent of Parliament, is illegal." . . . "That levying money for or to the use of the Crown, by pretence of prerogative, without grant of Parliament for longer time or in other manner than the same is or shall be granted, is illegal."—1st, 2nd, and 4th Articles of the Bill of Rights.

[2] See Allen, Rise and Growth of Royal Prerogative in England; Stubbs, Const. Hist. i. 135; ii. 317. 354. 508.

[3] Coronation oath, 1 Will. & Mary, sess. 1, c. 6.

[4] 1 Will. & Mary, sess. 2, c. 2, s. 9.

[5] 12 & 13 Will. III. c. 2, s. 2.

[6] 5 & 6 Ann. c. 8.

[7] Act of Union, 5 & 6 Ann. c. 8, s. 2; 3 & 4 Ann. c. 7; Scotch Act,

Prerogative in connexion with Parliament.

The prerogatives of the Crown, in connexion with the legislature, are of paramount importance and dignity. The legal existence of Parliament results from the exercise of royal prerogative. As "supreme governor, as well in all spiritual or ecclesiastical things or causes as temporal,"[1] the Queen virtually appoints all archbishops and bishops, who form one of the three estates of the realm, and, as "lords spiritual," hold the highest rank, after princes of the blood royal, in the House of Lords. All titles of honour are the gift of the Crown, and thus the "lords temporal" also, who form the remainder of the upper house, have been created by royal prerogative, and their number may be increased at pleasure. In early times the summons of peers to attend Parliament depended entirely on the Royal will: but their hereditary titles have long since been held to confer a right to sit in Parliament. To a Queen's writ, also, even the House of Commons owe their election as the representatives of the people. Under the Royal Titles Act, 1876, her Majesty has further assumed the title of Empress of India. To these fundamental powers are added others, of scarcely less importance, which will be noticed in their proper place.

II. The House of Lords.

II. The Lords Spiritual and Temporal sit together, and jointly constitute the House of Lords, which is the second branch of the legislature in rank and dignity.

1. Lords spiritual.

1. The lords spiritual are the archbishops and bishops of the Church of England having seats in Parliament by ancient usage, and by statute. Before the Conquest, the lords spiritual held a prominent place in the great Saxon councils, which they retained in the councils of the Norman kings; but the right, or tenure, by which they have held a place in Parliament,

5 Ann. c. 6 (for securing the Protestant religion and Presbyterian church government).

[1] Act 1 Eliz. c. 1, s. 19; Gibson, Codex, i. 45. Concerning the use of the title "Supreme head of the Church," see Coke, 4th Inst. 344; Hooker, Eccl. Pol. book viii. c. 4; Zurich Letters (Parker Society), i. 29. 33. The preamble of 2 & 3 Ann. c. 20 (Queen Anne's bounty), addressed Her Majesty as "the only supreme head on earth" of the Church of England.

since the Conquest, has not been agreed upon by constitutional writers. In the Saxon times, there is no doubt that they sat, as bishops, by virtue of their ecclesiastical office; but, according to Selden, William the Conqueror, in the fourth year of his reign, first brought the bishops and abbots under the tenure by barony;[1] and Blackstone, adopting the same view, states that "William the Conqueror thought proper to change the spiritual tenure of frank-almoign, or free alms, under which the bishops held their lands under the Saxon government, into the feudal or Norman tenure by barony; and in right of succession to those baronies, which were inalienable from their respective dignities, the bishops and abbots were allowed their seats in the House of Lords."[2] Lord Hale was of opinion that the bishops sit by usage; and Hallam maintains that the bishops of William the Conqueror were entitled to sit in his councils by the general custom of Europe, which invited the superior ecclesiastics to such offices, and by the common law of England, which the Conquest did not overturn.[3] It has also been suggested, that before the dissolution of the monasteries the mitred abbots had a seat in Parliament solely by virtue of their tenures as barons; but that the bishops sat in a double capacity, as bishops and as barons.[4] By the Constitutions of Clarendon, 10 Henry II., there is a legislative declaration that the bishops shall hold their lands as baronies, and attend the king's court; but it is quite clear that the bishops sat in Parliament, in virtue of their episcopal dignities, before they were thus brought under the tenure *per baroniam*. By subjecting their lands to the feudal services incident to the tenure *per baroniam*, including the duty of attending the king's court when summoned, their prior right to sit as members of the legislature would not

[1] Tit. of Hon. part 2, s. 20.

[2] 1 Comm. p. 156.

[3] 2 Middle Ages, 138. See also Stubbs, Const. Hist. i. 230; ii. 169. 194.

[4] Elsynge says, "ratione episcopalis dignitatis et tenuræ." Hody, Treatise on Convocations, 126. See also Burn, Eccl. Law, 216 *et seq.*

have been prejudiced; and if not they would appear to have attended afterwards in both capacities. Their presence in Parliament, however, except during the Commonwealth,[1] has been uninterrupted, and their right to sit there unquestioned, whatever nominal changes may have been effected in the nature of their tenure.

There are two archbishops (of Canterbury and York) and twenty-four of the English bishops having seats in Parliament.[2] By the Act 10 & 11 Vict. c. 108, it was enacted, that the number of lords spiritual shall not be increased by the creation of the bishopric of Manchester; and whenever there shall be a vacancy, by the avoidance of any one of the sees of Canterbury, York, London, Durham, or Winchester, or of any other see filled by the translation of a bishop already sitting, such vacancy shall be supplied by the issue of a writ of summons to the bishop elected to the same see; but if the vacancy be caused by the avoidance of any other see, such vacancy shall be supplied by the issue of a writ of summons to that bishop who shall not have previously become entitled to such writ; and no bishop elected to any see, not being one of the five sees above named, shall be entitled to a writ of summons, unless in the order and according to the conditions above prescribed. And similar provisions have been introduced into later acts, by which other bishoprics have since been created.[3] To the estate of lords spiritual were added four bishops on the part of Ireland, on the union of that country with Great Britain, who sat by rotation of sessions, and represented the whole episcopal body of Ireland in Parliament.[4] But, on the disestablishment of the Irish

[1] They were excluded by Act 16 Car. I. c. 27, and did not resume their seats, after the Restoration, in the Convention Parliament, but were restored in the next Parliament, by statute 13 Car. II. c. 2.

[2] The Bishop of Sodor and Man has no seat in Parliament. The late bishop, Lord Auckland, sat as a peer amongst the barons.

[3] St. Albans, 1875 (38 & 39 Vict. c. 34); Truro, 1876 (39 & 40 Vict. c. 54); Liverpool, Newcastle, Southwell and Wakefield, 1878 (41 & 42 Vict. c. 68).

[4] 39 & 40 Geo. III. c. 67 (Act of Union, art. 4); 40 Geo. III. (Irish) c. 29; 3 & 4 Will. IV. c. 37, ss. 51. 52.

Church in 1869, the bishops of that Church were deprived of their seats in Parliament after the 1st January 1871.[1]

2. The lords temporal are divided into dukes, marquesses, earls, viscounts, and barons, whose titles are of different degrees of antiquity and honour. The title of duke, though first in rank, is by no means the most ancient in this country. It was a feudal title of high dignity in all parts of Europe, in very early times, and among the Saxons, *duces* (or leaders) are frequently mentioned; but the title was first conferred, after the Conquest, by Edward III., upon his son Edward the Black Prince, whom he created Duke of Cornwall.[2] Before that time the title had often been used as synonymous with that of *comes* and *ealdorman*.[3]

2. Lords t poral.

Dukes.

Marquess

Marquesses were originally lords of the marches or borders, and derived their title from the offices held by them. In the German empire, the counts or *graves* of those provinces which were on the frontiers had the titles of *marchio* and *marggravius* in Latin, of *markgraf* in German, and *marchese* in Italian. In England, similar offices and titles were anciently enjoyed without being attached to any distinct dignity in the peerage. The noblemen who governed the provinces on the borders of Wales and Scotland were called *marchiones*, and claimed certain privileges by virtue of their office; but the earliest creation of marquess, as a title of honour, was in the ninth year of Richard II. Robert de Vere, Earl of Oxford, was then created Marquess of Dublin for life; and the rank assigned to him in Parliament, by right of this new dignity, was immediately after the dukes, and before the earls.[4] In the same reign, John, Earl of Somerset, was created Marquess of Dorset, but was deprived of the title by Henry IV. In the fourth year of the latter reign, the Parliament prayed the king to restore this dignity; but the Earl begged to

[1] 32 & 33 Vict. c. 42.

[2] Selden, Tit. of Hon. part 2, s. 9. 29, &c.

[3] See a comparison of these titles, Kemble, Saxons, ii. 127, *notes*.

[4] Selden, Tit. of Hon. part 2, s. 47.

decline its acceptance, because the name was so strange in this kingdom.[1]

Earls.

The title of Earl, in England, is equivalent to that of the Roman *comes*, or count in other countries of Europe. Amongst the Saxons there were *ealdormen*, to whom the civil, military, and judicial administration of shires was committed, but whose titles were official and not hereditary,[2] although the office was frequently held by the heads of the same family in succession.[3] That title was often used by writers indifferently with *comes*, on account of the similarity of character and dignity denoted by those names. When the Danes had gained ascendancy in England, the ancient Danish title of *eorle*, which signified "noble by birth," and was also used to indicate a similar dignity, was gradually substituted for that of *ealdorman*.[4] At the Norman Conquest the title of eorle or earl was in universal use, and was so high a dignity, that in the earliest charters of William the Conqueror, he styles himself, in Latin, "Princeps Normannorum," and in Saxon, Eorle or Earl of Normandy.[5] After the Conquest, the Norman name of count distinguished the noblemen who enjoyed this dignity, from whence the shires committed to their charge have ever since been called counties.[6] In the course of time the original title of earl was revived; but their wives, and peeresses of that rank in their own right, have always retained the French or Norman name of countesses.

Viscounts.

Between the dignities of earl and baron no rank intervened, in England, until the reign of Henry VI.: but in France the title of viscount, as subordinate to that of count, was very ancient. The great counts of that kingdom, holding

[1] 3 Rot. Parl. 488.

[2] West, Inquiry into the Manner of creating Peers, 3. 4. Spelman on Feuds and Tenures, 13. Rep. on Dignity of the Peerage, 1820, 17. Kemble, Saxons, ii. 131–150.

[3] Palgrave, Engl. Com. 592 *et seq.*

[4] Palgrave, Engl. Com. 11. 118. 326. 327. Kemble, Saxons in England, ii. 132. See also 2 Hallam, Middle Ages, 65, 9th edit.

[5] Selden, Tit. of Hon. part 2, s. 2.

[6] Rep. on Dignity of the Peerage, 86.

large territories in feudal sovereignty, appointed governors of parts of their possessions, who were called viscounts, or *vicecomites*. These, either by feudal gift or by usurpation, often obtained an inheritance in the districts confided to them, and transmitted the lands and dignity to their posterity.[1] In England, the title of viscount was first conferred upon John Beaumont, Viscount Beaumont, by Henry VI., in the eighteenth year of his reign; and a place was assigned to him in Parliament, the council, and other assemblies, above all the barons.[2] The French origin of this dignity was exemplified, immediately afterwards, by the grant of the viscounty of Beaumont, in France, to the same person, by King Henry, who then styled himself king of France and England. The rank and precedence of a viscount were more distinctly defined by patent, in the 23rd of Henry VI., to be above the heirs and sons of earls, and immediately after the earls themselves.

Barons. Barons are often mentioned in the councils of the Saxon kings, and in the laws of Edward the Confessor were classed with the archbishops, bishops, and earls: but the name bore different significations, and no distinct dignity was annexed to it, as in later times. After the Conquest, every dignity was attached to the possession of lands, which were held immediately of the king, subject to feudal services. The lands which were granted by William the Conqueror to his followers descended to their posterity; and those who held lands of the Crown *per baroniam* were ennobled by the dignity of baron. By the feudal system, every tenant was bound to attend the court of his immediate superior; and hence it was the duty of the barons, as tenants *in capite* of the king, to attend the king's court or council: but although their obligation to attend the king's council was one of the services incident to their tenure, they received writs of summons from the king when their attendance was required. At length when

[1] Selden, Tit. of Hon. part 2, s. 19. [2] Ib. s. 30.

the lands became subdivided, and the tenants *per baroniam* were consequently more numerous and poor, some of them only were summoned by writ, and thus they were gradually separated into greater and lesser barons: of whom the former continued to receive particular writs of summons from the king, and the latter a general summons only through the sheriffs. The feudal tenure of the baronies afterwards became unnecessary to create the dignity of a baron, and the king's writ or patent, and occasionally an Act of Parliament, or creation "in pleno Parliamento," conferred the dignity and the seat in Parliament.[1] The condition of the lesser barons, after their separation from their more powerful brethren, will be presently explained.

Representative peers of Scotland.

On the union of Scotland, in 1707, the Scottish peers were not admitted, as a class, to seats in the British Parliament: but, in pursuance of the provisions of several statutes,[2] they elect for each Parliament sixteen representatives from their own body. The representative peers of Scotland enjoy all the privileges of Parliament, including the right of sitting upon the trials of peers; and all peers of Scotland are peers of Great Britain, and have rank and precedency immediately after the peers of the like orders and degrees in England, at the time of the union, and before all peers of Great Britain of the like orders and degrees created since the union, and are to be tried as peers, and enjoy all privileges as peers, except the right of sitting in Parliament, or upon the trials of peers.[3] The Scottish peerage consists exclusively of the descendants of peers before the union, as no provision was made for any subsequent creation of Scottish peers by the Crown. An authentic list of the peerage was entered in the

[1] 3 Selden, Works, 713–743. West, Inquiry into the Manner of creating Peers, 6. 14. 30. 31. 36. 70. 71. 3 Rep. Dign. of Peerage, 97, &c. 2 Hallam, Middle Ages, 261.

[2] Act of Union, 5 & 6 Ann. c. 8, art. xxii. & xxiii. Act of the Parliament of Scotland, 5 Ann. c. 8. 6 Ann. c. 23. 10 & 11 Vict. c. 52. 14 & 15 Vict. c. 87. 15 & 16 Vict. c. 35.

[3] Act of Union, 5 Ann. c. 8, art. xxiii.

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roll of peers, by order of the House of Lords, on the 12th February 1708, to which other peerages have since been added by order of that house, when claims have been established; and in order to prevent the assumption of dormant and extinct peerages, it is provided, by 10 & 11 Victoria, c. 52, that no title standing in that roll, in right of which no vote has been given since 1800, shall be called over at an election, without an order of the House of Lords. The House of Lords, when they have disallowed any claim, may also order that such title shall not be called over at any future election. A Scotch representative peer, on being created a peer of Great Britain, ceases to be one of the representatives of the peerage of Scotland.[1]

And Ireland.

Under the Act for the legislative union with Ireland,[2] which came into operation in 1801, the Irish peers elect twenty-eight representatives for life from the peerage of Ireland.[3] By that Act, the power of the Queen to add to the number of Irish peers is subject to limitation. She may make promotions in the peerage at all times; but she can only create a new Irish peer as often as three of the peerages of Ireland, which were in existence at the time of the union, have become extinct.[4] But if it should happen that the number of Irish peers,—exclusive of those holding any peerage of the United Kingdom, which entitles them to an hereditary seat in the House of Lords,—should be reduced to one hundred, then one new Irish peerage may be created as often as one of such hundred peerages becomes extinct, or as often as an Irish peer becomes entitled, by descent or creation, to an hereditary seat in Parliament. The object of that article of union was to

[1] Cases of the Duke of Queensberry and the Marquis of Abercorn, 37 Lords J. 594, b. 26 Parl. Hist. 585. 595.

[2] 39 & 40 Geo. III. c. 67; 40 Geo. III. c. 38, I.

[3] By the 45 & 46 Victoria, c. 26, the period from the teste of the writs to the return was reduced from fifty-two days to thirty days.

[4] See Fermoy Peerage case, 1856; 140 Hans. Deb., 3rd Ser. 698. 88 Lords' J. 150 (Judges' opinions), 336.

keep up the Irish peerage to the number of one hundred, exclusive of Irish peers who may be entitled, by descent or creation, to an hereditary seat in the House of Lords of the United Kingdom.[1] The representative peers of Ireland are entitled to the privileges of Lords of Parliament, and all the peers of Ireland have privilege of peerage.[2] They may be elected as members of the House of Commons, for any place in Great Britain; but while sitting there, they do not enjoy the privilege of peerage.[3] These, then, are the component parts of the House of Lords, of whom all peers and lords of Parliament, whatever may be their title, have equal voice in Parliament. By a Standing Order of the House of Lords, no peer is permitted to sit in the House until he is twenty-one years of age; and by the Act of Union the representative peers of Scotland are required to be of full age.[4]

Life peerages.

Life peerages were formerly not unknown in our constitution;[5] and in 1856 Her Majesty, having been advised to revive the dignity, with a view to improve the appellate jurisdiction of the House of Lords, created Sir James Parke, late one of the barons of the Court of Exchequer, by letters-patent, Baron Wensleydale, "for and during the term of his natural life."[6] But the House of Lords referred these letters-patent to a Committee of Privileges, which, after examining all the precedents of life peerages, reported their opinion, "that neither the said letters-patent, nor the said letters-patent with the usual writ of summons issued in pursuance thereof, can enable the grantee therein named to sit and vote in Parlia-

[1] Several attempts have lately been made to amend this part of the Act of Union, and to arrest the further creation of Irish peers; and, of late years, vacancies have not been filled up. Rep. of Lords' Committee, 1874, on representative peerages of Scotland and Ireland; Debate in House of Lords, 9th July, 1875, and address to the Queen; 225 Hans. Deb., 3rd Ser. 1210; Debates on Lord Inchiquin's Irish Peerage Bills, 1876 & 1877; Lords' Parl. Return, 1877, No. 148; Burke's Peerage.

[2] See Coates *v.* Lord Hawarden, 7 Barn. & Cr. 388.

[3] Fourth art. of Union.

[4] Lords' S. O. No. 12. 5 Ann. c. 8, art. xxv. s. 12.

[5] See cases collected by Committee of Privileges, 1856.

[6] Letters-Patent, 16th Jan. 1856.

ment."[1] The House concurred in this opinion, and Lord Wensleydale, therefore, did not offer to take the oaths and his seat, but was shortly afterwards created an hereditary baron, in the usual form.[2] The expediency of creating life peers, however, continued to be discussed;[3] and at length, in 1876, three lords of appeal in ordinary were constituted by statute, enjoying the rank of baron for life, and the right of sitting and voting so long as they continue in office.[4]

Lords spiritual and temporal form one body.

The two estates of lords spiritual and lords temporal, thus constituted, may originally have had an equal voice in all matters deliberated upon, and had separate places for their discussion: but at a very early period they are found to constitute one assembly; and for many centuries past, though retaining their distinct character and denominations, they have been, practically, but one estate of the realm. Thus the Act of Uniformity, 1st Elizabeth, c. 2, was passed by the queen, the lords temporal, and the commons, although the whole estate of the lords spiritual dissented. The lords temporal are the hereditary peers of the realm, whose blood is ennobled, and whose dignities can only be lost by attainder, or taken away by Act of Parliament;[5] but the bishops, not being ennobled in blood, are lords of Parliament only, and not peers.[6] This distinction having been expressly declared by the House of Lords, in 1692, must be held conclusive of the fact that bishops are not peers, although in more ancient

[1] Report of Committee of Privileges, 1856, No. 18.

[2] 140 Hans. Deb., 3rd Ser. 263. 1290; 1 May, Const. Hist. 291–299.

[3] 142 Hans. Deb., 3rd Ser. 780, &c.; 143 Ib. 428, &c.

[4] 39 & 40 Vict. c. 59, ss. 6. 14. The third lord of appeal was not appointed until 1882, when two paid judges of the judicial committee had died or resigned.

[5] 12 Rep. 107. 12 Mod. 56. 3 Rep. Dig. Peerage, 93. In 1679, during the debates concerning Lord Danby's plea of a Royal pardon in bar of his impeachment, an accommodation was proposed by the Court, to avoid his attainder, that he should be banished and degraded from his peerage by Act of Parliament.—2 Burnet, Own Times, 202.

[6] See Lords' S. O., No. 61. "It would be resolved what privilege noblemen and peers have, betwixt which this difference is to be observed, that bishops are only lords of Parliament, but not peers, for they are not of tryal by nobility."

times such a distinction appears to have been unknown. The votes of the spiritual and temporal lords are intermixed, and the joint majority of the members of both estates determine every question; but they sit apart, on separate benches, the place assigned to the lords spiritual being the upper part of the house, on the right hand of the throne.

By constant additions to the peerage the number of members of the House of Lords, comprising the several orders, spiritual and temporal, of which it is constituted, has been raised to upwards of 500.[1]

III. The House of Commons.

III. The third estate is that of the Commons of the realm, represented in Parliament by the knights, citizens, and burgesses. The date of their admission to a place in the legislature has been a subject of controversy among historians and constitutional writers; of whom some have traced their claims up to the Saxon period, while others deny them any share in the government, until long after the Conquest. Without entering minutely upon a subject, which, although of the deepest interest, is no longer of constitutional import, a brief statement will serve to unfold the ancient character of the House of Commons, and to render its present constitution the more intelligible.

Saxon institutions.

It is agreed by many writers of learning and authority, that the Commons formed part of the great synods or councils before the Conquest; but how they were summoned or selected, and what degree of power they possessed, is a matter of doubt and obscurity. Under the Saxon kings, all the forms of local government were undoubtedly popular.

Shire-gemót.

The shire-gemót was a kind of county Parliament, over which the ealdorman, or earl of the shire, presided, with the bishop, the shire-gerieve, or sheriff, and the assessors appointed to assist their deliberations upon points of law. A shire-gemót was held at least twice a year in every county, when the magistrates, thanes, and abbots, with all the clergy

[1] In February, 1883, there were 518.—*Roll of Lords Spiritual and Temporal.*

and landholders, were required to be present; and a variety of business was transacted: but the proceedings of these assemblies generally partook more of the character of a court of justice, than of a legislative body.

Witena-gemót.

That the constitution of the witena-gemót, or national council, was equally popular, cannot be affirmed with any confidence. Although the smaller proprietors of land may not have been actually disqualified by law from taking part in the proceedings; yet the distance of the council from their homes, and the absence of sufficient means or inducement to undertake a difficult and dangerous journey, must practically have prevented them from attending. It has been conjectured that they were represented by their tithing men, and the inhabitants of towns by their chief magistrates: but notwithstanding the learning and ingenuity which have been devoted to the inquiry, no system of election or political representation, properly so called, can be distinctly traced back to that time.

The clergy may have been virtually represented by the bishops and abbots, and the absent laity of each shire by the ealdorman, the sheriff, and such of the rich proprietors of land as may have been able to attend the gemót.[1] The people may thus have been held to be present at the making of laws, and their name accordingly introduced into the records. That they were actually present on some occasions, is certain; but that they had any right to attend, either by themselves or by elected representatives, may indeed be fairly conjectured, but has not yet been historically proved.[2]

The Conquest.

But whatever may have been the position of the people in the Saxon government, the Conquest, and the strictly feudal character of the Norman institutions, must have brought them completely under the subjection of their feudal supe-

[1] Kemble, Saxons in England, ii. 193–201.

[2] See Sir F. Palgrave's English Commonwealth, 314. 631. 364–658, and Proofs, ccxxix. ccclxxxv. Turner, Hist. of the Anglo-Saxons, iii. 180. 184. Thorpe, Leg. Sax. i. 358. Chron. Sax. An. 1020. Ingulfus, 863. Stubbs, Const. Hist. i. 121.

riors. From the haughty character of the Norman barons, and the helpless condition of a conquered people, it is probable that the commonalty, as a class, were not admitted to any share in the national councils, until some time after the Conquest, but were bound by the acts of their feudal lords; and that the Norman councils were formed of the spiritual lords, and mainly, if not exclusively, of the tenants in chief of the Crown, who held by military service.[1]

This inference is confirmed by the peculiar character of feudal institutions, which made the revenue of the early Norman kings independent of the people. As feudal superiors they were entitled to receive various services, fines and pecuniary aids from their tenants, who held under them all the lands in the kingdom. These sources of revenue were augmented by pecuniary commutations of feudal services, and by customs levied upon corporate towns in return for commercial privileges, which were, from time to time, conceded to them. Wars were the principal causes of expense, when it was natural for kings to seek the advice of the chief barons, upon whose military services they depended. Nor had they any interest in consulting the people, from whom they had no taxes to demand, and whose personal services in war were already due to their feudal lords. In the absence of any distinct evidence, it is not, therefore, probable that the Norman kings should have summoned representatives of the people until these sources of revenue had failed, and the commonalty had become more wealthy.

Knights of the shire.

Consistently with the feudal character of the Norman councils, the first knights of the shire are supposed to have been the lesser barons, who, though still summoned to Parliament, gradually forebore to attend, and selected some of the richest and most influential of their body to represent them. The words of the charter of King John favour this position; for it is there promised that the greater barons

[1] Rep. Dignity of Peerage, 34.

shall be summoned personally by letters from the king, and all other tenants in chief under the Crown by the sheriffs and bailiffs. The summons to the lesser barons being thus only general, no peculiar obligation of personal attendance was imposed; and, as their numbers increased, and their wealth was subdivided, they were naturally reluctant to incur the charge of distant journeys, and the mortification of being held in slight esteem by the greater barons. This position receives confirmation from the ancient law of Scotland,[1] in which the small barons and free tenants were classed together, and jointly required to send representatives. To the tenants in chief by knight's service were added, from time to time, the representatives of the richer cities and boroughs; and this addition to the legislature may be regarded as the origin of the Commons, as a distinct estate of the realm in Parliament.

Citizens and burgesses.

It is not known at what time these important changes in the constitution of Parliament occurred, for no mention is made of the Commons, in any of the early records after the Conquest. William the Conqueror in the fourth year of his reign, summoned, by the advice of his barons, a council of noble and wise men, learned in the law of England, and twelve were returned out of every county to show what the customs of the kingdom were:[2] but this assembly, although, in the opinion of Lord Hale, it was "as sufficient and effectual a Parliament as ever was held in England,"[3] bore little resemblance to a legal summons of the commonalty, as an estate of the realm.[4]

After this period, the laws and charters of William and his immediate successors constantly mention councils of bishops, abbots, barons, and the chief persons of the kingdom, but are silent as to the Commons. But in the 22nd year of Henry II. (A.D. 1176), Benedict Abbas relates, that about

[1] 1427, c. 102.
[2] 1 Hoveden, 343.
[3] 1 Hale, Hist. of the Common Law, 202.
[4] 2 Hallam, Middle Ages, 146.

the feast of St. Paul, the king came to Northampton, and there held a great council concerning the statutes of his realm, in the presence of the bishops, earls, and barons of his dominions, and with the advice of his knights and *men*. This is the first chronicle which appears to include the Commons in the national councils: but it would be too vague to elucidate the inquiry, even if its authority were of a higher order. And again, in the 15th of King John (A.D. 1213), a writ was directed to the sheriff of each county, "to send four discreet knights to confer with us concerning the affairs of our kingdom:" but it does not appear whether they were elected by the county, or picked, at pleasure, by the sheriff.[1]

Magna Charta of King John.

Two years afterwards, the great charter of King John defined the constitution of Parliament more clearly than any earlier record: but even there the origin of the representative system is left in obscurity. It reserves to the city of London, and to all other cities, boroughs, and towns, and to the cinque ports, and other ports, all their ancient liberties and free customs. But whether the summons to Parliament, which is there promised, was then first instituted, or whether it was an ancient privilege confirmed and guaranteed for the future, the words of the charter do not sufficiently explain. From this time, however, may be clearly traced the existence of a Parliament, similar to that which has continued to our own days.

"The main constitution of Parliament, as it now stands," says Blackstone, "was marked out so long ago as the seventeenth year of King John, A.D. 1215, in the great charter granted by that prince, wherein he promises to summon all archbishops, bishops, abbots, earls, and greater barons personally, and all other tenants in chief under the Crown by the sheriff and bailiffs, to meet at a certain place, with forty days' notice, to assess aids and scutages when necessary."

Growth of representation.

Notwithstanding the distinctness of this promise, the

[1] 2 Prynne, Register, 16. See also Palgrave, English Commonwealth, Chap. IX.

charters of Henry III. omitted the engagement to summon the tenants in chief by the sheriff and bailiffs; and it is doubtful whether they were summoned or not, in the early part of that reign. But a writ of the 38th year (A.D. 1254) is extant, which involves the principle of representation more distinctly than any previous writ or charter. It requires the sheriff of each county "to cause to come before the king's council two good and discreet knights of his county, *whom the men of the county shall have chosen for this purpose*, in the stead of all and each of them, to consider, along with the knights of other counties, what aid they will grant the king."[1] This, however, was for a particular occasion only; and to appear before the council is not to vote as an estate of the realm. Moreover, the practice of summoning citizens and others before the council, for particular purposes, continued long after the regular summons of members to Parliament from cities and boroughs had commenced.[2] Nevertheless, representation of some kind then existed, and it is interesting to observe how early the people had a share in granting subsidies. Another writ, in 1261, directs the sheriffs to cause knights to repair, from each county, to the king at Windsor.[3] At length, in the 49th Henry III. (A.D. 1265), writs were issued to the sheriffs by Simon de Montfort, Earl of Leicester, in the king's name, directing them to return two knights for each county, and two citizens or burgesses for every city and borough; and from this time may be clearly dated the recognition of the Commons, as an estate of the realm in Parliament.[4] It is true that they were not afterwards summoned without intermission: but there is evidence to prove that they were repeatedly assembled by Edward I., especially in the 11th, the 21st, 22nd, and 23rd years of his

[1] 2 Prynne, Register, 23.

[2] For instances in the reign of Edward III. and Richard II. see Rep. Dig. Peerage, App. I. 450. 457. 458. 469. 474. 741. Rym. Fœd. 186.

[3] 2 Prynne, Register, 27.

[4] See Lord Lyttelton, Hist. of Hen. II. ii. 276; iv. 79 *et seq.* Stubbs, Const. Hist. ii. 93.

reign.[1] Passing over less prominent records of the participation of the Commons in the government, the statute of the 25th Edward I., "De tallagio non concedendo," must not be overlooked. It was there declared that "no tallage or aid shall be taken or levied by us or our heirs in our realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land." This statute acknowledges the right of the Commons to tax themselves; and a few years later a general power of legislation was also recognised as inherent in them. A statute was passed in the 15th Edward II. (1322), which declares that "the matters to be established for the estate of the king and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in Parliament, by the king and by the assent of the prelates, earls, and barons, and the commonalty of the realm, *according as had been before accustomed.*" In reference to this statute Hallam justly observes, "that it not only establishes by a legislative declaration the present constitution of Parliament; but recognises it as already standing upon a custom of some length of time."[2] It may be added, in conclusion, that during the reign of Edward III. the Commons were regularly mentioned in the enacting part of the statutes, having been rarely mentioned there in previous reigns.[3]

Lords and Commons originally sat in one Chamber.

So far the constituent parts of Parliament may be traced; and the three estates of the realm originally sat together in one chamber. When the lesser barons began to secede from personal attendance, as a body, and to send represen-

[1] See Table of Writs, Rep. Dig. Peerage, 489. Writs of Summons to Parliament, by Palgrave, 1827–1834. Parry, Parliaments and Councils of England, Intr.; and 49–69. Ruffhead, Pref. to Statutes. The writ of the 22nd Edw. I. is for knights only. Lord Colchester's Diary, iii. 27. 40. 47. 54–66.

[2] 1 Const. Hist. 4, *n.* See also Guizot, Histoire des origines du Gouvernement Représentatif en Europe. Sir Roger Twysden's Tract, Camden Soc. Pub. 1849. Stubbs, Const. Hist. Chap. xiv.–xvi.

[3] 2 Hallam, Middle Ages, 180. Hakewel, 101. Cotton, Abridgment, Pref.

tatives, they continued to sit with the greater barons as before: but when they were joined by the citizens and burgesses, who, by reason of their order, had no claim to sit with the barons, it is natural that they should have consulted with the other representatives, although they continued to sit in the same chamber as the Lords. The ancient treatise, "De modo tenendi Parliamentum," if of unquestioned authority, would be conclusive of the fact that the three estates ordinarily sat together: but that when any difficult and doubtful case of peace or war arose, each estate sat separately, by direction of the king. But this work can claim no higher antiquity than the reign of Richard II., and its authority is only useful so far as it may be evidence of tradition, believed and relied on at that period. Misled by its supposed authenticity, Sir Edward Coke and Elsynge entertained no doubt of the fact as there stated; and the former alleged that he had seen a record of the 30th Henry I. (1130), of the degrees and seats of the Lords and Commons as one body; and that the separation took place at the desire of the Commons.[1]

The union of the two houses is sometimes deduced from the supposed absence of a speaker of the Commons in early times: but Sir Edward Coke is in error when he infers that the Commons had no speaker so late as the 28th of Edward I.;[2] for in the 44th of Henry III., Peter de Montfort signed and sealed an answer of the Parliament to Pope Alexander after the Lords, "vice totius communitatis."[3] Nor can any decided opinion be formed from the fact of speakers of the Commons not having been mentioned in earlier times; for if they consulted apart from the Lords, a speaker would have been as necessary to preside over their deliberations, as when a more complete separation ensued. The first speaker of the Commons to whom that title was expressly given was Sir T. Hungerford, in the 51st Edward III. (1376).[4]

[1] 13 Howell, St. Trials, 1130.
[2] 4th Inst. 2.
[3] Elsynge, 155. Hakewel, 200.
[4] 2 Rot. Parl. 374. 2 Hatsell,

It appears from several entries in the rolls of Parliament in the early part of the reign of Edward III., that after the cause of summons had been declared by the king to the three estates collectively, the prelates with the clergy consulted by themselves; the earls and barons by themselves; and the Commons, and sometimes even the citizens and burgesses,[1] by themselves; and that they all delivered their joint answer to the king.[2]

The inquiry, however, is of little moment, for whether the Commons sat with the Lords in a distinct part of the same chamber, or in separate houses as at present, it can scarcely be contended that, at any time after the admission of the citizens and burgesses, the Commons intermixed with the Lords, in their votes, as one assembly. Their chief business was the voting of subsidies, and the bishops granted one subsidy, the lords temporal another, and the Commons again a separate subsidy for themselves. The Commons could not have had a voice in the grants of the other estates; and although the authority of their name was used in the sanction of Acts of Parliament, they ordinarily appeared as petitioners. In that character it is not conceivable that they could have voted with the Lords; and it is well known that down to the reign of Henry VI., no laws were actually written and enacted until the end of the Parliament.

When separated.

Various dates have been assigned for the formal separation of the two houses, some as early as the 49th Henry III.,[3]

212, *n.* 2 Hallam, Middle Ages, 190. In 1377, Sir Peter de la Mare was chosen speaker, and is said in the Parliamentary History to be the first on record. 1 Parl. Hist. 339. 349. 2 Hatsell, 212.

[1] In the 46 Edw. III., after the Parliament had granted supplies, and the petitions of the Commons had been read and answered, the knights of the shire had leave to depart, and writs for their wages and expenses were made out for them by the chancellor's order; but he commanded the citizens and burgesses to stay, who being again assembled before the prince, prelates, and lords, granted for the safe conveying their ships and goods 2*s.* on every tun of wine imported or exported out of the kingdom, and 6*d.* in the pound on all their goods and merchandise for one year.—2 Rot. Parl. 310.

[2] Rot. Parl. 5 & 6 Edward III. 4 Inst. 2. Elsynge, 102.

[3] Per Lord Ellenborough, in Burdett *v.* Abbot.

and others so late as the 17th Edward III.:[1] but as it is admitted that they often sat apart for deliberation, particular instances in which they met in different places will not determine whether their separation, at those times, was temporary or permanent. When the Commons deliberated apart, they sat in the chapter-house of the abbot of Westminster; and they continued their sittings in that place, after their final separation.[2]

Number of the Commons at different times.

The number of members admitted to the House of Commons has varied considerably at different periods. In addition to those boroughs which appear from the first to have returned burgesses to Parliament, many others had that privilege conferred upon them by charter, or by statute, in succeeding reigns; while some were omitted by the negligence or corruption of sheriffs, and others were discharged from what they considered a heavy burthen,—the expense of maintaining their members. In the time of Edward III. 4*s.* a day were allowed to a knight of the shire, and 2*s.* to a citizen or burgess;[3] and this charge was, in the case of poor and small communities, too great an evil to be compensated by the possible benefit of representation. In the reign of Henry VI., there were not more than 300 members of the House of Commons, being about 25 more than in the reign of Edward I., and 50 more than in the reign of Edward III. The legislature added 27 for Wales,[4] and four for the county and city of Chester,[5] in the reign of Henry VIII., and four for the county and city of Durham, in the reign of Charles II.;[6] while 180 new members were added by royal charter between the reigns of Henry VIII. and Charles II.[7]

Wages of members.

Union of Scotland and Ireland.

Forty-five members were assigned to Scotland, as her proportion of members in the British Parliament, on the union

[1] Carte, Hist. 451.

[2] Elsynge, 104. 1 Parl. Hist. 91. 2 Rot. Parl. 289. 351.

[3] 4 Inst. 16. Prynne, 4th Register, pp. 53. 495.

[4] 27 Hen. VIII. c. 26.

[5] 34 Hen. VIII. c. 13.

[6] 25 Car. II. c. 9.

[7] Christian's Notes to Blackstone. 2 Hatsell, 413.

of that kingdom with England;[1] and one hundred to Ireland at the commencement of the present century, when her Parliament became incorporated with that of the United Kingdom. By these successive additions the number was increased to 658; and notwithstanding the changes effected in the distribution of the elective franchise by the Reform Acts in 1832, that number continued unaltered until the disfranchisement of Sudbury, in 1844. The full complement was restored by the Reform Acts of 1867-68, but was afterwards reduced to 651, by the disfranchisement of Bridgwater, Beverley, Sligo, and Cashel, and by the temporary suspension of one seat for Norwich. And since 1881, it has been enacted, from time to time, that no election should be held for Boston, Canterbury, Chester, Gloucester, Macclesfield, Oxford, and Sandwich.

Reform Acts for England and Wales, 1832 and 1867.

The object of the English Reform Act of 1832,[2] as stated in the preamble, was to correct divers abuses that had long prevailed in the choice of members; to deprive many inconsiderable places of the right of returning members; to grant such privilege to large, populous, and wealthy towns; to increase the number of knights of the shire; to extend the elective franchise to many of his Majesty's subjects who have not heretofore enjoyed the same, and to diminish the expense of elections. To effect these changes, 56 boroughs in England and Wales were entirely disfranchised, and 30 which

[1] The election of representatives by the freeholders in Scotland had been recognized by the statute law so far back as the reign of James I. By Act 1425, c. 52, all freeholders were required to give personal attendance in Parliament, and not by a procurator; from which it is evident that representation was then the custom. Nor was it possible to restrain it by law, for two years afterwards it was authorised, and the constitution of the House of Commons defined. By Act 1427, c. 102, it was declared, "that the small barons and free tenants need not come to parliaments; provided that, at the head court of every sheriffdom, two or more wise men be chosen, according to the extent of the shire, who shall have power to hear, treat and finally to determine all causes laid before Parliament; and to chuse a speaker, who shall propose all and sundry needs and causes pertaining to the commons in Parliament."

[2] 2 & 3 Will. IV. c. 45.

had previously returned two members were restricted to one member; while 42 new boroughs were created, of which 22 were each to return two members, and 20 a single member. Several small boroughs in Wales were united for the purpose of contributing to return a member.

The result of these and other local arrangements which it is not necessary to describe, was that the two universities and the several cities and boroughs contributed 341 citizens and burgesses for England and Wales.[1]

By the Reform Act of 1867, the boroughs of Totnes, Reigate, Yarmouth, and Lancaster were disfranchised; 38 boroughs previously returning two members were reduced to one. Manchester, Liverpool, Birmingham, and Leeds each received a third member; Merthyr Tydfil and Salford each a second member; the Tower Hamlets were divided into two boroughs, each returning two members; 10 new boroughs were created, of which Chelsea returned two members, and every other borough one only. By these arrangements the representatives for boroughs were reduced by 26; and the University of London became entitled to return one member. But before this Act came into operation, seven English boroughs, *viz.*, Arundel, Ashburton, Dartmouth, Honiton, Lyme Regis, Thetford, and Wells, were disfranchised by the Scotch Reform Act of 1868, and the seats added to Scotland. Several of the counties were divided, by the Reform Act of 1832, into electoral districts or divisions, by which the number of knights of the shire was increased to 162. And, again, by the Reform Act of 1867, 13 counties were further divided, and received an addition of 25 members.

The number of members for Scotland was increased by

For Scotland, 1832 and 1868;

[1] Until 1872, the ancient terms of knights, citizens, and burgesses, barons of the cinque ports and burgesses of the universities, were used in the writs and returns; but by the Parliamentary and Municipal Elections Act, 1872, these distinctions were discontinued, and all are alike termed members, in the writs and returns.

the Scotch Reform Act of 1832[1] from 45 to 53; 30 of whom were commissioners of shires, and 23 commissioners of burghs, representing towns, burghs, or districts of small burghs. And again, by the Scotch Reform Act of 1868, the number of members for Scotland was increased to 60; three new members being given to shires, two to the universities, and two to cities and burghs.

And Ireland, 1832 and 1868.

By the Irish Reform Act of 1832,[2] the number of representatives for Ireland in the Imperial Parliament was increased from 100 to 105; 64 being for counties, 39 for cities and boroughs, and two for the University of Dublin. By the Irish Reform Act of 1868, no change was made in the number of members representing that part of the United Kingdom, nor in the distribution of seats; but the two disfranchised boroughs of Sligo and Cashel are still left without representation.

Constituency of English counties.

The classes of persons by whom these representatives are elected may be described, generally, in few words, if the legal questions connected with the franchise, which are both numerous and intricate, be avoided. To begin with the English counties. Before the 8th of Henry VI. all freeholders or suitors present at the county court[3] had a right to vote (or, as is affirmed by some, all freemen): but by a statute passed in that year (c. 7), the right was limited to "people dwelling and resident in the same counties, whereof every one of them shall have free land or tenement to the value of 40*s.* by the year, at the least, above all charges." By the Reform Act of 1832 this franchise of a 40*s.* freehold of inheritance was not disturbed; but limitations were imposed upon freehold tenures for life. No person, if not seised at the passing of the Act, was entitled to vote in respect of such tenures, unless he was in *bonâ fide* occupation of lands and tenements, or unless they came to him by marriage, marriage-settlement, devise, or promotion to any benefice or

[1] 2 & 3 Will. IV. c. 65. [2] Ib. c. 88. [3] See Act 7 Hen. IV. c. 15.

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office, or unless they were of the clear yearly value of 10*l.*, which value was reduced to 5*l.* by the Reform Act of 1867. Copyholders having an estate of 10*l.* a year; leaseholders of land of that value whose leases were originally granted for 60 years; leaseholders of 50*l.*, with 20 years' leases; and tenants-at-will occupying lands or tenements paying a rent of not less than 50*l.* a year, had the right of voting conferred upon them by the Reform Act of 1832; and the Act of 1867 reduced the franchise of copyholders and leaseholders from 10*l.* to 5*l.*, and the occupation franchise from 50*l.* to 12*l.*

Of cities and boroughs.

In cities and boroughs the right of voting formerly varied according to the ancient custom prevailing in each. With certain modifications, some of these ancient rights were retained by the Reform Act of 1832, as that of freemen, and other corporate qualifications: but all occupiers of houses of the clear yearly value of 10*l.* were enfranchised by that Act. The Reform Act of 1867 extended the borough franchise to all occupiers of dwelling-houses[1] who have resided for twelve months on the 31st July, in any year, and have been rated to the poor rates as ordinary occupiers, and have, on or before the 20th July, paid such rates up to the preceding 5th January,[2] and to lodgers who have occupied, for the same period, lodgings[3] of the annual value, unfurnished, of 10*l.* By the 32 & 33 Vict. c. 41, owners may pay the rates upon houses under 20*l.*, without disqualifying the occupier; and vestries may rate the owner instead of the occupier.

Registration.

By whatever right these various classes of persons claim to vote, either for counties or for cities and boroughs, it is necessary that they shall be registered in lists prepared by the overseers of each parish. On certain days courts are held, by barristers appointed by the Lord Chief Justice of England and the Senior Judge of each Summer Circuit, to

[1] Dwelling-house defined by 41 & 42 Vict. c. 26, s. 5; and see 41 & 42 Vict. cc. 3 and 5 (House Occupiers' Disqualification, England and Scotland).

[2] 30 & 31 Vict. c. 102, s. 3.

[3] Lodgings more fully defined by 41 & 42 Vict. c. 26, ss. 5, 6.

revise these lists, when claims may be made by persons omitted, and objections may be offered to any name inserted by the overseers. If an objection be sustained, the name is struck off the list; and the claimant will have no right to vote at any ensuing election unless he shall succeed, at a subsequent registration, in establishing his claim: but, in certain cases, there is an appeal to the Queen's Bench Division of the High Court of Justice from the decisions of revising barristers;[1] and the register is corrected in accordance with the judgment of that court.

In Scotland.

The Scotch Reform Act of 1832[2] reserved the rights of all persons then on the roll of freeholders of any shire, or who were entitled to be put upon it, and extended the franchise to all owners of property of the clear yearly value of 10*l.*, and to certain classes of leaseholders. In cities, towns and burghs, the Act substituted a 10*l.* household franchise for the system of electing members by the town councils, which had previously existed. By the Scotch Reform Act of 1868, the county franchise was extended to owners of lands and heritages of 5*l.* yearly value, and to occupiers of the rateable value of 14*l.*; and the borough franchise to all occupiers of dwelling-houses paying their rates; and to tenants of lodgings of 10*l.* clear annual value, unfurnished.

In Ireland.

In Ireland various classes of freeholders and leaseholders were invested with the county franchise, by the Reform Act of 1832,[3] to whom were added, by the 13 & 14 Vict. c. 69, occupiers of land, rated for the poor rate at a net annual value of 12*l.*; and persons entitled to estates in fee, or in tail, or for life, of the rated value of 5*l.* And by the latter Act, in addition to the borough constituency under the Reform Act, the occupiers of lands or premises rated at 8*l.* were entitled to vote for cities and boroughs. By 16 & 17 Vict. c. 58, provision was made for the annual revision of the lists of voters for the city of Dublin. By the Irish

[1] 2 & 3 Will. IV. c. 45; 6 & 7 Vict. c. 18; 41 & 42 Vict. c. 26.

[2] 2 & 3 Will. IV. c. 65.

[3] 2 & 3 Will. IV. c. 88.

Reform Act of 1868, the borough franchise was extended to occupiers of houses rated at 4*l.*, and of lodgings of the annual value of 10*l.* unfurnished. No change was made in the qualification of county voters.[1]

Qualification of voters.

It has not been attempted to explain, in detail, all the distinctions of the elective franchise; neither is it proposed to state all the grounds upon which persons may be disqualified from voting. Aliens, persons under 21 years of age, of unsound mind, in receipt of parochial relief, or convicted of certain offences, are incapable of voting. Many officers, also, concerned in the collection of the revenue were formerly disqualified: but by recent statutes all these disabilities have been removed.[2]

Property qualification of members abolished.

The legal qualifications and disqualifications for sitting and voting in Parliament may now be briefly enumerated. The property qualification which, since the reign of Queen Anne,[3] had been required for members sitting for places in England and Ireland, was in the year 1858 entirely abolished.

Qualifications and disqualifications.

Formerly it was necessary that the member chosen should himself be one of the body represented.[4] The law, however, was constantly disregarded, and in 1774 was repealed.[5] An alien is disqualified to be a member of either House of Parliament.[6] The Act 12 & 13 Will. III. c. 2, declared that "no persons born out of the kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen, except such as are born of English parents), shall be capable to be of the privy council, or a member of either House of Parliament." The 1st George I., stat. 2, c. 4, in order to enforce the provisions

Aliens.

[1] The law of registration in Ireland was also amended by a separate Act, 31 & 32 Vict. c. 112.

[2] By Act 31 & 32 Vict. c. 73, revenue officers disfranchised by 7 & 8 Geo. III. c. 53, 22 Geo. III. c. 41, and 43 Geo. III. c. 25, were restored to the right of voting; and by 37 & 38 Vict. c. 22, they were relieved from all remaining disabilities.

[3] By 9 Anne, c. 5; 33 Geo. II. c. 20; 1 & 2 Vict. c. 48.

[4] 1 Peck. 19. 1 Hen. V. c. 1. 8 Hen. VI. c. 7. 10 Hen. VI. c. 2. 23 Hen. VI. c. 15.

[5] 14 Geo. III. c. 58.

[6] 7 & 8 Vict. c. 66, s. 6.

of the Act of William, required a special clause of disqualification to be inserted in every Naturalization Act: but as no clause of this nature could bind any future Parliament, occasional exceptions were permitted, as in the cases of Prince Leopold in 1816, and Prince Albert in 1840;[1] and this provision of the 1st George I. has since been altogether repealed by the 7 & 8 Vict. c. 66, s. 2. Later Naturalization Acts have since been passed, without such a disqualifying clause.[2] And by the 33 & 34 Vict. c. 14, an alien to whom a certificate of naturalization is granted by the Secretary of State, becomes entitled to all political and other rights, powers, and privileges, and is subject to all the obligations of a British subject.[3]

Minors.

By the 7 & 8 Will. III. c. 25, s. 8, a minor was disqualified to be elected. Before the passing of that Act, several members were notoriously under age, yet their sitting was not objected to. Sir Edward Coke said that they sat "by connivance: but if questioned would be put out;"[4] yet on the 16th of December 1690, on the hearing of a controverted election, Mr. Trenchard, though admitted by his counsel to be a minor, was declared upon a division to be duly elected.[5] On the 18th of December 1667, however, the House of Lords had declared, "That according to the law of the realm, and the ancient constitution of Parliament, minors ought not to sit nor vote in Parliament."[6] In 1717, Sir Wilfred Lawson, returned for Cockermouth, on a double return, withdrew his petition against the other sitting member, admitting that he

[1] In 1765 the judges were unanimously of opinion, "That an alien married to a King of Great Britain is, by operation of the law of the Crown (which is part of the common law), to be deemed as a natural-born person from the time of such marriage, so as not to be disabled by the Act 12 Will. III." 31 Lords' J. 174.

[2] Lowther's Naturalization Act, 1866; Bischoffsheim, Baron de Ferrieres, and Lange's Acts, 1867; Bolckow's Act, 1868; De Virte's and Mackay's Acts, 1877; Ramingen's Act, 1880.

[3] See also 33 & 34 Vict. c. 102; 35 & 36 Vict. c. 39.

[4] 10 March, 1623; 1 Com. J. 681.

[5] 2 Hatsell, 9; 10 Com. J. 508.

[6] 12 Lords' J. 174.

was a minor at the time of his election.[1] But even after the passing of the Act of Will. III., some minors sat "by connivance." Charles James Fox was returned for Midhurst when he was 19 years and four months old, and sat and spoke before he was of age;[2] and Lord John Russell was returned for Tavistock a month before he came of age.[3]

Members already sitting.

By the law of Parliament a member already returned for one place, is ineligible for any other, until his first seat is vacated; and hence it is the practice for a member, desiring to represent some other place, to accept the Chiltern Hundreds, or other similar office under the Crown, in order to render himself eligible at the election.

Mental imbecility.

Mental imbecility is a disqualification; and should a member, who was sane at the time of his election, afterwards become a lunatic, his seat may be avoided, as in the case of Grampound in 1566:[4] but the house will require proof that the malady is incurable.[5]

Peers and judges.

English peers are ineligible to the House of Commons, as having a seat in the upper house;[6] and Scotch peers, as being represented there, by virtue of the Act of Union:[7] but Irish peers, unless elected as one of the representative peers of Ireland, may sit for any place in *Great Britain*.[8] The English, Scotch, and Irish judges are disqualified,[9] together with the holders of various offices parti-

Offices.

[1] 18 Com. J. 672.

[2] 1 Memorials of Fox, 51.

[3] Earl Russell, Recollections and Suggestions.

[4] D'Ewes, 126. 1 Com. J. 75. Rogers, 57.

[5] Mr. Alcock's case in 1811; 66 Com. J. 226. 265. App. (687). There is a curious entry in the Journal of 14 Feb. 1609, "Hassard—69—incurable—bed-rid—a new writ;" 1 Com. J. 392. See also complaint that Mr. A. Steuart, a certified lunatic patient, had voted in a division 13th May 1861; 162 Hans. Deb., 3rd Ser. 1941.

[6] See Chap. XXII (Elections).

[7] The provisions of the law are sufficiently distinct upon that point; and there are numerous precedents of new writs issued in the room of members becoming peers of Scotland; *e.g.*, Earl of Dysert, 10th Nov. 1707; Lord Galloway, 13th Jan. 1774; Earl of Lauderdale, 22nd Jan. 1790; Earl of Eglinton, 3rd Nov. 1796; Marquess of Queensberry, 3rd Feb. 1857, &c.

[8] Act of Union, 39 & 40 Geo. III. c. 67.

[9] The English judges by the law of Parliament, 1 Com. J. 257; and by the Judicature Act, 1873, s. 9; and Judicature Act Amendment Act,

cularly excluded by statutes.[1] A large class of offices which incapacitate the holders for Parliament are *new offices*, or places of profit under the Crown, created since the 25th of October, 1705, as defined by the 6th of Anne, c. 7;[2] and also new offices in Ireland under the 33rd Geo. III. c. 41. The holders of certain pensions from the Crown are disqualified by statute.[3] But pensions granted under 4 & 5 Will. IV. c. 24 and 22 Vict. c. 26, for civil and diplomatic services, do not disqualify the holders from being elected, or sitting and voting.[4]

Pensions.

Sheriffs and returning officers.

The sheriff of a county has been held ineligible for that county; and also for any city or borough to which his precept extended:[5] but he is eligible for any other county, or for any county of a city or borough within his county, or elsewhere, provided the writ for the election is directed to some other returning officer, and not to himself.[6] And no returning officer is capable of being elected for his own city or borough.[7] By the Scotch Reform Act, 1832 (s. 36), no sheriff substitute, sheriff clerk, or deputy sheriff clerk is entitled to be elected for his own shire; nor any town clerk, or deputy town clerk, for his own city, borough, town or district.

1875, s. 5; the Scotch judges, by 7 Geo. II. c. 16; the Irish judges, by 1 & 2 Geo. IV. c. 44; the judge of the Admiralty Court, by 3 & 4 Vict. c. 66. See Debate on the Judges' Exclusion Bill, 1st June 1853. The Master of the Rolls alone enjoyed an exemption from this disability until the passing of the Judicature Act, 1873.

[1] That all the special disqualifications for Parliament cannot be enumerated within the limits of this chapter, will be believed, when it is stated that they were to be collected from at least 116 statutes. See Pamphlet by the Author, on the Consolidation of the Election Laws, 1850. See also Index to Statutes, by Statute Law Committee, tit. House of Commons, 2 (a), (b).

[2] See Rogers on Elections, 187; and General Journal Indexes, tit. Elections (Writs); and *infra*, Ch. XXII.

[3] 6 Anne, c. 41, s. 24; 1 Geo. I. stat. 2, c. 56.

[4] 32 & 33 Vict. c. 15; 32 & 33 Vict. c. 43, s. 17.

[5] But the application of this law has been much restricted by the 16 & 17 Vict. c. 68, which requires writs to be directed to the returning officers of boroughs, instead of to the sheriff.

[6] 2 Hatsell, 30–34. 4 Dougl. 87. 123.

[7] 9 Com. J. 725 (Thetford Case). Wakefield Case, Barron & Austin, 295. Rogers on Elections, 184.

Clergy.

By the 41 Geo. III. c. 63, which arose out of Mr. Horne Tooke's election, it is declared that "no person having been ordained to the office of priest or deacon, or being a minister of the Church of Scotland, is capable of being elected;" and that if he should sit or vote, he is liable to forfeit 500*l.* for each day, to anyone who may sue for the same. It is doubtful whether, before the passing of this Act, persons in holy orders had not been disqualified by the law of Parliament. The precedents collected upon the subject in 1801[1] were obscure and inconclusive; and there was much difference of opinion, amongst legal and parliamentary authorities, as to the existing state of the law. The House of Commons refused to declare Mr. Horne Tooke ineligible: and, having been already elected, he was excepted from the operation of the Act.[2] The Roman Catholic clergy were also excluded by 10 Geo. IV. c. 7, s. 9. But by the 33 & 34 Vict. c. 91, when a person has relinquished in due form his office of priest or deacon in the Church of England, he is discharged from all disabilities and disqualifications, including that of 41 Geo. III. c. 63, and is therefore eligible to sit in Parliament.

Contractors.

Government contractors, being supposed to be liable to the influence of their employers, are disqualified from serving in Parliament. The Act 22 Geo. III. c. 45, declares that any person who shall, directly or indirectly, himself, or by any one in trust for him, undertake any contract with a government department, shall be incapable of being elected, or of sitting or voting during the time he shall hold such contract, or any share thereof, or any benefit or emolument arising from the same: but the Act does not affect incorporated trading companies, contracting in their corporate capacity. The penalties for violations of the Act are peculiarly severe. A contractor sitting or voting is liable to forfeit 500*l.* for

[1] See Reports of Precedents: 35 Parl. Hist. 1343. 8 Com. J. 341. 346. 1 Com. J. 27 (13 Oct. 1553). 1 Com. J. 513 (8 Feb. 1620). 2 Hatsell, 12.

[2] 35 Parl. Hist. 1402. 1414. 1542. 1544.

every day on which he shall sit or vote, to any person who may sue for the same; and every person against whom this penalty shall be recovered, is incapable of holding any contract. The Act goes still further (s. 10), and even imposes a penalty of 500*l.* upon any person who admits a member of the House of Commons to a share of a contract.[1] The Act 41 Geo. III. c. 52, disqualifies in the same manner, and under similar penalties, all persons holding contracts with any of the government departments in Ireland.

Loan contractors.

But the provisions of these Acts have been held not to apply to contractors for government loans. In June 1855, the attention of the House was directed to the fact that Messrs. Rothschild had entered into a contract with the government for a loan of 16,000,000*l.* for the public service; and a committee was appointed to inquire whether Baron Lionel Nathan de Rothschild, who was a partner in that house, had vacated his seat by reason of this contract. The committee, after hearing Baron Rothschild by counsel, reported their opinion that there was no contract, agreement, or commission between Messrs. R. and the Treasury within the true intent and meaning of the 22nd Geo. III. c. 45;[2] and in order to avoid future doubts upon this question, a clause has been introduced into the Acts which have since been passed for raising loans, providing that the Act of Geo. III. shall not be construed to extend to any subscriber or contributor to the loan.[3]

Bankrupts.

Originally by the 52 Geo. III. c. 144, and now by the Bankruptcy Act, 1869, s. 121-124, if a member of the House of Commons is adjudged bankrupt, he shall be, for one year from the date of the order of adjudication, incapable of sitting and voting, unless within that time the order is annulled, or the creditors are fully paid or satisfied. At the expiration of that time the court is required to certify the bankruptcy to the Speaker; when the seat of the member is vacant, and

[1] See Report, 15th March, 1869, on case of Sir Sydney Waterlow.

[2] Report, 1855 (401).

[3] 19 & 20 Vict. cc. 5, 6. 21.

a new writ is issued.[1] As no penalty attaches to a bankrupt for sitting and voting, and as no official notice of his bankruptcy is required to be given to the Speaker for a year, he may sit with impunity in the meantime, unless the House take notice of his sitting, and order him to withdraw. On the 15th June 1858, a copy of the record of adjudication of bankruptcy against Mr. Townsend, a member, which had been ordered and presented, was read. The Acts 52 Geo. III. c. 144; and 12 & 13 Vict. c. 106, s. 5 (Bankrupt Law Consolidation), were also read; and a motion being made, and question proposed, "That Mr. John Townsend, the member for the borough of Greenwich, having on the 29th day of March last been found, declared, and adjudged a bankrupt, has since been, and still is, by law incapable of sitting and voting in this house," Mr. Townsend was heard in his place, and withdrew; when the question was put, and agreed to. The house then ordered, "That the said Mr. John Townsend do withdraw from this house until his bankruptcy shall have been superseded or annulled, or until his creditors, proving their debts, shall have been paid or satisfied to the full amount of their debts." And notice being taken, that Mr. Townsend had, since his bankruptcy, voted in several divisions, it was ordered that the said votes be disallowed.[2] It appears, however, that a member whose estate is under liquidation, pursuant to the 24th section of the Bankruptcy Act, 1869, is in a different position from that of a bankrupt. The estate of a member had been under liquidation, upon his own petition, since the 9th March 1870; but he continued to sit and vote in Parliament. On the 26th March 1872, a creditor applied to the Court of Bankruptcy to issue a certificate to the Speaker of the House of Commons, stating that after more than a year this member's debts had not been fully paid and satisfied, so as to vacate his seat. But the registrar, holding that liquidation by arrangement was

[1] See 85 Com. J. 3, for the form of proceeding in such cases.

[2] 113 Com. J. 229.

quite distinct from an adjudication of bankruptcy, refused the application, with costs.[1] This decision was afterwards affirmed, upon appeal, by the Lords Justices.[2] It does not appear that disqualification arises in the case of a Scotch sequestration. But bankruptcy in Ireland creates disabilities similar to those under the English law.[3] By the Bankruptcy Act, 1869, s. 120, if a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with in like manner as if he had not such privilege. It would not appear that a bankrupt is ineligible as a member, but he would be disabled from sitting and voting; and if his bankruptcy were not annulled, a new writ would ultimately be issued.

Bankrupt peers.

On the 7th July 1870, it was adjudged, upon appeal, by the House of Lords, that a peer of the realm enjoying the privileges of Parliament was subject, in 1869 (before the passing of the Bankruptcy Act of that year), to an adjudication in bankruptcy, under the 24 & 25 Vict. c. 134.[4] The Act of 1869 more distinctly set aside the privileges of Parliament in cases of bankruptcy; and in 1871 the disqualification for sitting and voting was extended to the House of Lords. By 34 & 35 Vict. c. 50, "Every peer who becomes a bankrupt shall be disqualified from sitting or voting in the House of Lords, or on any Committee thereof; and further, if a peer of Scotland or Ireland, shall be disqualified from being elected to sit and vote in the House of Lords." In England, he becomes bankrupt when an order has been made under any Act adjudging him a bankrupt; or when a special resolution has been passed, in pursuance of the Bankruptcy Act, 1869, declaring that his affairs are to be liquidated by arrangement; in Scotland, when sequestration of his estate has been awarded: in Ireland, when he is adjudged bankrupt, or has filed a petition for an arrangement. When a bankruptcy has been determined in the manner prescribed by

[1] "Times," 27 March 1872.
[2] "Weekly Reporter," XX. 735. 7 Chancery Appeal Cases, 519.
[3] 19 & 20 Geo. III. c. 25, s. 9.
[4] 102 Lords' J. 397.

the Act, these disqualifications cease. The seat of a representative peer for Scotland and Ireland, unless his bankruptcy is determined within one year, is vacated at the end of the year, and a new election is to be held. A disqualified person who sits or votes, or attempts to sit or vote, is guilty of a breach of privilege.

The Court is to certify the bankruptcy to the Speaker of the House of Lords, and the Clerk of the Crown. A writ of summons is not to be issued to any peer for the time being disqualified; but a disqualified peer is not deprived of his privileges of peerage, or entitled to be elected to, or to sit in, the House of Commons. And this Act has since been applied to certain peers who had come within its provisions.[1]

Persons attainted.

A person attainted,[2] or adjudged guilty[3] of treason or felony, and not having endured the punishment to which he was adjudged, or received a pardon,[4] is disqualified: but an indictment for felony causes no disqualification until conviction;[5] and even after conviction a new writ will not be

[1] April 9th and 25th, 1872; 104 Lords' J. 138. 206. June 4th and 25th, 1872; Ib. 321, 322. 342. 429. 27th January 1881.

[2] Lord Coke, 4th Inst. 47.

[3] W. Smith O'Brien, 1849. O'Donovan Rossa, 10th Feb. 1870. In the latter case, as the person had been convicted and sentenced to imprisonment under the Treason-Felony Act, 11 & 12 Vict c. 12, it was contended that, not being attainted, there was no disqualification; but the House determined that he was disqualified. The resolution in this case was that, J. O'D. R. "having been adjudged guilty of felony, and sentenced to penal servitude for life, and being now imprisoned under such sentence, has become, and continues incapable of being elected or returned as a member of this House."

[4] Case of John Mitchel, 18th Feb. 1875; Acts 9 Geo. IV. c. 32, s. 3; 9 Geo. IV. c. 54, s. 33; 33 & 34 Vict. c. 22, s. 2; Parl. Paper, No. 50, 1875; 222 Hans. Deb., 3rd Ser. 493. John Mitchel having been re-elected, after a contest, a petition was filed against his return, and praying for the seat, when this ground of disqualification was confirmed by the Court of Common Pleas in Ireland, and the petitioner, who had given due notice of the disqualification, was seated as member for Tipperary. 3 O'Malley & Hardcastle, Reports, 37. Case of Michael Davitt, 28th Feb. 1882; 137 Com. J. 77; Hans. Deb., 27th and 28th Feb. 1882.

[5] 21st Jan. 1580; 1 Com. J. 118, 119, "A motion was made to know the mind of this House touching a burgess of this House standing indicted of felony, whether he ought in that case to remain a member of this House; or else to be removed:

issued, where a writ of error is pending, until the judgment has been affirmed.[1]

These are the chief but not the only grounds of disqualification for sitting in the House of Commons. Many others will be found collected in the various works upon election law, where those also which have been touched upon, in this place, are more fully detailed.[2]

Mode of election.

To these explanations concerning the persons of whom Parliament is composed, it is not necessary to add any particulars as to the mode of election; further than that the elections are held by the sheriffs or other returning officers, in obedience to the Queen's writ out of Chancery,[3] and are determined by the majority of registered electors. By the Parliamentary and Municipal Elections Act, 1872, the public nomination of candidates was discontinued, and the votes of electors are taken by ballot. In the case of a county, the Returning Officer is to give notice of the day of election within two days after he receives the writ, and in a borough, on the day on which he receives the writ, or the following day.

it was adjudged, he ought to remain still of this House, unless he were convicted." 1 Com. J. 119.

[1] Case of Mr. S. O'Brien, 104 Com. J. 319.

[2] Rogers, Shepherd, Stephens, Montagu & Neale, Wordsworth, &c. See also Chapter XXII.

[3] By 16 & 17 Vict. c. 68, writs are now directed to the returning officers of boroughs instead of to the sheriff of the county. The poll at the Universities is also restricted to five days. By 24 & 25 Vict. c. 53, amended by 31 & 32 Vict. c. 65, voting papers are allowed in University elections. By 16 Vict. c. 15, c. 28, the poll at county elections in England and Wales and Scotland, was reduced to one day. By 25 & 26 Vict. cc. 62 and 92, similar provision was made for Ireland. By the Parliamentary and Municipal Elections Act, 1872, a new form of writ was introduced, and the present mode of conducting elections, and the several duties of returning officers, are prescribed. On the 27th Feb. 1880, a new writ was issued for West Norfolk. On the previous day, the Queen in Council had pricked the list of sheriffs for the year; and by the post which bore the writ to Norwich, was despatched the warrant to the new sheriff. Meanwhile, however, the outgoing sheriff received the writ and indorsed it, and a question arose whether it should be executed by the outgoing or the incoming sheriff. On reference to the 3 & 4 Will. IV. c. 99, s. 9, it was held that the incoming sheriff should execute the writ, and he was at once sworn in for that purpose.

In the case of a county or district borough election, the day of election is to be fixed by the Returning Officer, not later than the ninth day after the day on which he receives the writ, with an interval of not less than three clear days between the day on which he gives the notice and the day of election; and in a borough, not later than the fourth day after the day on which he receives the writ, with an interval of not less than two clear days between the notice and the election.[1] In counties, or district boroughs, the poll is to be taken not less than two, nor more than six clear days after the nomination; and in boroughs, not more than three clear days after the nomination. In reckoning time for all election proceedings, Sunday, Christmas Day, Good Friday, and public fast and thanksgiving days are to be excluded.[2]

[1] Ballot Act, 1872, 1st Schedule, ss. 1, 2. [2] Ib. sect. 56.

CHAPTER II.

POWER AND JURISDICTION OF PARLIAMENT COLLECTIVELY.—RIGHTS AND POWERS OF EACH OF ITS CONSTITUENT PARTS.

Legislative authority of Parliament, collectively.

The legislative authority of Parliament extends over the United Kingdom, and all its colonies and foreign possessions; and there are no other limits to its power of making laws for the whole empire than those which are incident to all sovereign authority—the willingness of the people to obey, or their power to resist. Unlike the legislatures of many other countries, it is bound by no fundamental charter or constitution; but has itself the sole constitutional right of establishing and altering the laws and government of the empire.

In the ordinary course of government, Parliament does not legislate directly for the colonies; and the introduction of responsible government has necessarily limited the occasions for such legislation. For some colonies the Queen in council legislates, while others have legislatures of their own, which propound laws for their internal government, subject to the approval of the Queen in council; but these may afterwards be repealed or amended by statutes of the Imperial Parliament; for their legislatures and their laws are both subordinate to the supreme power of the mother country.[1] For example, the constitution of Lower Canada was suspended in 1838; and a provisional government, with legislative functions and great executive powers, was established by the British Parliament.[2] Slavery, also, was abolished by an Act of Parliament, in 1833, throughout all

[1] "Parliamentary legislation, on any subject of exclusively internal concern to any British colony, possessing a representative assembly, is, as a general rule, unconstitutional. It is a right of which the exercise is reserved for extreme cases, in which necessity at once creates and justifies the exception." — Lord Glenelg. (Parl. Pap. 1839 (118), p. 7.)

[2] 1 & 2 Vict. c. 9; 2 & 3 Vict. c. 53. See also the Parliament of

the British possessions, whether governed by local legislatures or not: but certain measures for carrying into effect the intentions of Parliament were left for subsequent enactment by the local bodies, or by the Queen in council. In 1838, the house of assembly of Jamaica had neglected to pass an effectual law for the regulation of prisons, which became necessary upon the emancipation of the negroes; when Parliament immediately interposed and passed a statute for that purpose.[1] The assembly, resenting the interference of the mother country, withheld the supplies, and otherwise neglected their functions; but Parliament reduced them to submission by an Act to suspend the colonial constitution, unless within a given time they should resume their duties.[2] And again, in 1846, that ancient constitution was surrendered by acts of the local legislature, confirmed by an Act of the Imperial Parliament.[3] In 1849, the constitutions of the Australian colonies were defined by statute: but the colonial governors and legislative councils were permitted to amend them, with the assent of the Queen in council.[4] The vast territories of British India, which had long been subject to the anomalous government of the East India Company, were transferred, by statute, to the Crown, in 1858, and have since been under the immediate legislative authority of Parliament.[5] And in 1867, the dominion of Canada was constituted by statute.[6]

There are some subjects upon which Parliament, in familiar language, is said to have no right to legislate: but the constitution has assigned no limits to its authority. Many laws may be unjust, and contrary to sound principles of government: but Parliament is not controlled in its discretion, and when it errs, its errors can only be corrected by itself. To adopt the words of Sir Edward Coke, the

Canada Act, 1875, and the Canada Copyright Act, 1875, as examples of the interposition of Parliament in colonial legislation.

[1] 1 & 2 Vict. c. 67.

[2] 2 & 3 Vict. c. 26.

[3] 29 & 30 Vict. c. 12.

[4] 13 & 14 Vict. c. 59.

[5] 21 & 22 Vict. c. 106.

[6] 30 & 31 Vict. c. 3.

power of Parliament "is so transcendant and absolute, that it cannot be confined, either for causes or persons, within any bounds."[1]

This being the authority of Parliament collectively, the laws and usage of the constitution have assigned peculiar powers, rights and privileges to each of its branches, in connexion with their joint legislative functions.

Prerogatives of the Crown in reference to the Parliament.

It is by the act of the Crown alone that Parliament can be assembled. The only occasions on which the Lords and Commons have met by their own authority, were previously to the restoration of King Charles II., and at the Revolution in 1688. The first act of Charles the Second's reign declared the Lords and Commons to be the two houses of Parliament, notwithstanding the irregular manner in which they had been assembled; and all their acts were confirmed by the succeeding Parliament summoned by the king, which however qualified the confirmation of them, by declaring that "the manner of the assembling, enforced by the difficulties and exigencies which then lay upon the nation, is not to be drawn into example." In the same manner, the first act of the reign of William and Mary declared the convention of Lords and Commons to be the two houses of Parliament, as if they had been summoned according to the usual form; and the succeeding Parliament recognised the legality of their acts.

Annual meeting of Parliament.

But although the Queen may determine the period for calling Parliaments, her prerogative is restrained within certain limits; as she is bound by statute[2] to issue writs within three years after the determination of a Parliament; while the practice of providing money for the public service by annual enactments, renders it compulsory upon her to meet Parliament every year.

The annual meeting of Parliament, now placed beyond the power of the Crown by a system of finance rather than

[1] 4 Inst. 36.

[2] 16 Chas. II. c. 1, and 6 & 7 Will. & Mary, c. 2.

by distinct enactment, had, in fact, been the law of England from very early times. By the statute 4 Edw. III. c. 14, "it is accorded that Parliament shall be holden every year once, [and] [or] more often if need be."[1] And again, in the 36 Edw. III. c. 10, it was granted "for redress of divers mischiefs and grievances which daily happen [a Parliament shall be holden or] be the Parliament holden *every year*, as another time was ordained by statute."[2]

It is well known that by extending the words "if need be," to the whole sentence instead of to the last part only, to which they are obviously limited,[3] the kings of England constantly disregarded these laws. It is impossible, however, for any words to be more distinct than those of the 36th Edward III., and it is plain from many records that they were rightly understood at the time. In the 50th Edward III., the Commons petitioned the king to establish, by statute, that a Parliament should be held each year; to which the king replied: "In regard to a Parliament each year, there *are* statutes and ordinances made, which should be duly maintained and kept."[4] So also to a similar petition in the 1st Richard II., it was answered, "So far as relates to the holding of Parliament each year, let the statutes thereupon be kept and observed; and as for the place of meeting, the king will therein do his pleasure."[5] And in the following year the king declared that he had summoned Parliament, because at the prayer of the Lords and Commons it had been ordained and agreed that Parliament should be held each year.[6]

In the preamble of the Act 16 Chas. I. c. 1, it was also distinctly affirmed, that "by the laws and statutes of this realm, Parliament ought to be holden at least once every year

[1] Record Comm. Statutes of the Realm.

[2] Ib.

[3] By an ordinance in the 5th Edw. III., the object of the law had been more clearly explained; viz., "Qe le roi tiegne Parlement une foiz p an', ou deu foiz si mestier soit." 1 Rot. Parl. 285.

[4] 2 Rot. Parl. 335.

[5] 3 Ib. 23.

[6] Ib. 32.

for the redress of grievances: but the appointment of the time and place of the holding thereof hath always belonged, as it ought, to his majesty and his royal progenitors."[1] Yet by the 16th Chas. II. c. 1, a recognition of these ancient laws was withheld: for the Act of Charles I. was repealed as "derogatory of his majesty's just rights and prerogative;" and the statutes of Edward III. were incorrectly construed to signify no more than that "Parliaments are to be held very often." All these statutes, however, were repealed, by implication, by this Act, and also by the 6 & 7 Will. & Mary, c. 2, which declares and enacts "that from henceforth Parliament shall be holden once in three years, at the least."

Summons.

The Parliament is summoned by the Queen's writ or letter issued out of Chancery, by advice of the privy council. By the 7 & 8 Will. III. c. 25, it was required that there shall be forty days[2] between the teste and the return of the writ of summons; and since the union with Scotland, it had been the invariable custom to extend this period to fifty days,[3] such being the period assigned in the case of the first Parliament of Great Britain after the Union. But by the 15 Vict. c. 23, this period has been reduced to thirty-five days after the proclamation appointing a time for the first meeting of the Parliament. The writ of summons has always named the day and place of meeting, without which the requisition to meet would be imperfect and nugatory.

Demise of the Crown.

The demise of the Crown is the only contingency upon which Parliament is required to meet without summons in the usual form. By the 6 Anne, c. 7, on the demise of the Crown, Parliament, if sitting, is immediately to proceed to act: and, if separated by adjournment or prorogation, is immediately to meet and sit. Before the passing of this Act,

[1] "Act for preventing of inconvenience happening from long intermission of Parliaments."

[2] Forty days were assigned for the period of the summons by the great charter of King John, in which are these words: "Faciemus summoneri . . . . ad certum diem, scilicet ad terminum quadraginta dierum ad minus, et ad certum locum."

[3] See 22 Art. of Union, 5th Anne, c. 8. 2 Hatsell, 290.

Parliament met on a Sunday, 8th March 1701, on the death of William III.;[1] and has since met three times, on similar occasions, on Sunday.[2] By the 37 Geo. III. c. 127, in case of the demise of the Crown after the dissolution or expiration of a Parliament, and before the day appointed by the writs of summons for assembling a new Parliament, the last preceding Parliament is immediately to convene and sit at Westminster, and be a Parliament for six months, subject in the meantime to prorogation or dissolution. In the event of another demise of the Crown during this interval of six months, before the dissolution of the Parliament thus revived, or before the meeting of a new Parliament, it is to convene again and sit immediately, as before, and to be a Parliament for six months from the date of such demise, subject, in the same manner, to be prorogued or dissolved. If the demise of the Crown should occur on the day appointed by the writs of summons for the assembling of a new Parliament, or after that day and before it has met and sat, the new Parliament is immediately to convene and sit, and be a Parliament for six months, as in the preceding cases. This statute, however, needs revision in reference to the latest enactment concerning the demise of the Crown.[3]

Causes of summons.

As the Queen appoints the time and place of meeting, so also at the commencement of every session she declares to both houses the causes of summons, by a speech delivered to them in the House of Lords by herself in person, or by commissioners appointed by her. Until she has done this, neither house can proceed with any business; but the causes of summons, as declared from the throne, do not bind Parliament to consider them alone, nor to proceed at once to the consideration of any of them. After the speech, any business may be commenced; and both houses,[4] in order to assert their

[1] 13 Com. J. 782.

[2] Queen Anne, 18 Com. J. 3; George II., 28 ib. 929. 933; George III., 75 ib. 82. 89. For other occasions of the demise of the Crown, see 20 ib. 866 (George I.); 85 ib. 589 (George IV.); 92 ib. 490 (William IV.).

[3] See *infra*, p. 53.

[4] This is done in the Lords in com-

right to act without reference to any authority but their own, invariably read a bill a first time, *pro formâ*, before they take the speech into consideration. Other business may also be transacted at the same time. In the Commons new writs are issued for places which have become vacant during a recess; returns are ordered, and even addresses are presented on matters unconnected with the speech. In 1840, a question of privilege, arising out of the action of Stockdale against the printers of the house, was entertained before any notice was taken of her majesty's speech. On the 3rd of May, 1880, a Select Committee was appointed to inquire into the claim of Mr. Bradlaugh to make an affirmation, before the Queen's speech had been delivered.[1]

On two occasions, during the illness of George III., the name and authority of the Crown were used for the purpose of opening the Parliament, when the sovereign was personally incapable of exercising his constitutional functions. On the first occasion, Parliament had been prorogued till the 20th November 1788, then to meet for the despatch of business. When Parliament assembled on that day, the king was under the care of his physicians, and unable to open Parliament, and declare the causes of summons. Both houses, however, proceeded to consider the measures necessary for a regency; and on the 3rd February 1789, Parliament was opened by a commission, to which the great seal had been affixed by the lord chancellor, without the authority of the king. Again, in 1810, Parliament stood prorogued till the 1st November, and met at a time when the king was incapable of issuing a commission. His illness continued, and on the 15th January without any personal exercise of authority by the king, Parliament was formally opened, and the causes of summons declared in virtue of a commission under the great seal, and "in his majesty's name."[2]

pliance with a standing order (No. 8), and in the Commons by usage.

[1] 135 Com. J. 124, and see *infra*, p. 210.

[2] For a full statement of these proceedings, see May, Constitutional History, i. 175-195 (7th Ed.).

It may here be incidentally remarked, that the Crown has also an important privilege in regard to the deliberations of both houses. The Speaker of the Lords is the lord high chancellor or lord keeper of the great seal,—an officer more closely connected with the Crown than any other in the state; and even the Speaker of the Commons, though elected by them, is submitted to the approval of the Crown.

Prorogation and adjournment.

Parliament, it has been seen, can only commence its deliberations at the time appointed by the Queen; neither can it continue them any longer than she pleases. She may prorogue Parliament by having her command signified, in her presence, by the lord chancellor or speaker of the House of Lords, to both houses; by writ under the great seal,[1] by commission, or by proclamation. Prior to 1867, the prorogation of Parliament from the day to which it stood summoned or prorogued to any further day, was effected by a writ or commission under the great seal: but by the 30 & 31 Vict. c. 81, the royal proclamation alone prorogues the Parliament, except at the close of a session.[2] The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed, except impeachments by the Commons, and writs of error and appeals before the House of Lords. Every bill must be renewed after a prorogation,[3] as if it had never been introduced, though the prorogation be for no more than a day. William III. prorogued Parliament from the 21st to the 23rd of October 1689, in order to renew the Bill of Rights, concerning which a difference had arisen between

[1] But Parliament is never prorogued by writ after its first meeting. In 1847, Parliament stood prorogued by writ till Thursday, 11th Nov. On that day it was again prorogued by writ till Thursday, 18th Nov., *i. e.*, one week; to assemble and be held, and sit for the despatch of divers urgent and important affairs.

[2] See also *infra*, Chap. VII.

[3] By 1 Geo. IV. c. 101, an Indian divorce bill is excepted from this rule, in certain cases. And by the 11 & 12 Vict. c. 98, election committees were not dissolved by prorogation.

the two houses, that was fatal to its progress.[1] As it is a rule that a bill of the same substance cannot be passed in either house twice in the same session, a prorogation has been resorted to, in other cases, to enable another bill to be brought in.[2]

Parliament assembled by proclamation.

When Parliament stands prorogued to a certain day, her majesty is empowered by Act 37 Geo. III. c. 127, amended by 33 & 34 Vict. c. 81, to issue a proclamation, giving notice of her royal intention that Parliament shall meet for the despatch of business on any other day, not less than six days[3] from the date of the proclamation; and Parliament then stands prorogued to that day, notwithstanding the previous prorogation. Pursuant to the first of these Acts, Parliament was assembled in September 1799;[4] and again on the 12th December 1854, Parliament then standing prorogued to the 14th; and, in 1857, in consequence of the suspension of the Bank Act of 1844, a proclamation was issued on the 16th November, assembling Parliament on the 3rd December.[5] Under the latter Act, Parliament, which stood prorogued to the 30th November 1878, was further prorogued, on the 27th, to the 5th December, on account of the Afghan war. And other Acts[6] have provided, that whenever the Crown shall cause the supplementary militia to be raised and enrolled, or drawn out and embodied, either in England or Scotland, when Parliament stands prorogued or adjourned for more than fourteen days, the Queen shall issue a proclamation for the meeting of Parliament within fourteen days. In compliance with this law, on the 1st December 1792, Parliament, which stood prorogued till the 1st January, was summoned by proclamation to meet on the 13th December. And by the Militia Acts Consolidation

[1] 10 Com. J. 271.

[2] Viz., in 1707, 1721, and 1831. See Chap. X.

[3] No such interval is required, if Parliament, while sitting, be prorogued by the Queen in person or by Commission.

[4] 54 Com. J. 745; 55 Ib. 3.

[5] See Appendix.

[6] 42 Geo. III. c. 90, s. 147, and c. 91, s. 142; 15 & 16 Vict. c. 50, s. 31.

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Act, 1875, this period of fourteen days was reduced to ten.[1]

When her majesty, by the advice of her privy council, has determined upon the prorogation of Parliament, a proclamation is issued, declaring that on a certain day Parliament will be prorogued until a day mentioned; and when it is intended that Parliament shall meet on that day, for despatch of business, the proclamation states that Parliament will then "assemble and be holden for the despatch of divers urgent and important affairs." It was formerly customary to give forty days' notice, by proclamation, of a meeting of Parliament for despatch of business,[2] but under the 37 George III. c. 127, amended by 33 & 34 Vict. c. 81, a notice of six days is sufficient for that purpose. In December 1877, Parliament having been recently prorogued to Thursday, 17th January (not for despatch of business), a further proclamation was issued on the 22nd December, declaring the Royal will and pleasure that Parliament should assemble on the said 17th January for despatch of business.

Proclamation prior to prorogation.

When Parliament has been dissolved and summoned for a certain day, it meets on that day for despatch of business, if not previously prorogued, without any proclamation for that purpose, the notice of such meeting being comprised in the proclamation of the dissolution, and the writs then issued.

Adjournment.

Adjournment is solely in the power of each house respectively. It has not been unusual, indeed, for the pleasure of the Crown to be signified in person, by message, commission, or proclamation, that both houses should adjourn; and in some cases such adjournments have scarcely differed from prorogations.[3] But although no instance has occurred in which either house has refused to adjourn, the communication might be disregarded. Business has frequently been trans-

[1] 38 & 39 Vict. c. 69, s. 45.

[2] 2 Hatsell, 230. 3 Chatham Corr., 126, *n.*

[3] In 1621, an adjournment for five months was directed by a royal commission, and agreed to. 1 Com. J. 639; 2 Rapin's Hist. 205. 9 Com. J. 158.

acted after the king's desire has been made known; and the question for adjournment has afterwards been put, in the ordinary manner, and determined after debate, amendment, and division.[1]

Under these circumstances it is surprising that so many instances of this practice should have occurred in comparatively modern times. Both houses adjourn at their own discretion, and daily exercise their right. Any interference on the part of the Crown is therefore impolitic, as it may chance to meet with opposition, and unnecessary, as ministers need only assign a sufficient cause for adjournment, when each house could adjourn, of its own accord, and for any period, however extended, which the occasion may require.[2] The pleasure of the Crown was last signified on the 1st March 1814;[3] and it is probable that the practice will not be revived.

A power of interfering with adjournments in certain cases has been conceded to the Crown by statute. The 39 & 40 Geo. III. c. 14, amended by 33 & 34 Vict. c. 81, enacts, that when both houses of Parliament stand adjourned for

[1] 2 Hatsell, 312. 316, 317. 1 Com. J. 807, 808, 809; 10 Ib. 694; 17 Ib. 26. 275. In 1799, 55 Ib. 49; 34 Parl. Hist. 1196, Lord Colchester's Diary, i. 192.

[2] In 1785 there was an adjournment from the 2nd August to the 27th October, in order to give time to the Irish Parliament to consider the commercial resolutions. 25 Parl. Hist. 934. In 1799, an adjournment extended from the 12th October to the 21st January; and in 1813, from the 20th December to the 1st March. In 1820, while the bill of pains and penalties against the Queen was pending in the House of Lords, the Commons adjourned, by four successive adjournments, from the 26th July to the 23rd November, when Parliament was prorogued. On the 18th August, 1882, both houses adjourned until the 24th October, in order to enable the Commons to conclude the consideration of new rules of procedure. On the reassembling of Parliament, the regularity of this adjournment was challenged in the House of Commons, mainly on the ground that the Appropriation Act having been passed, no further business could be proceeded with. But, on the other hand, the precedent of 1820 was relied upon as conclusive, the constitutional objections were answered, and the adjournment was approved by a large majority. 137 Com. J. 489; 274 Hans. Deb. 3rd Ser. 3. See also, *infra*, Chap. XXI. (Supply and Ways and Means).

[3] 49 Lords' J. 747. 69 Com. J. 132.

more than fourteen days, the Queen may issue a proclamation, with the advice of her privy council, declaring that the Parliament shall meet on a day not less than six days from the proclamation; and the houses of Parliament then stand adjourned to the day and place declared in the proclamation; and all the orders which may have been made by either house, and appointed for the original day of meeting, or any subsequent day, stand appointed for the day named in the proclamation.

Dissolution.

The Queen may also close the existence of Parliament by a dissolution. She is not, however, entirely free to define the duration of a Parliament. Before the Triennial Act, 6th of William and Mary, c. 2, there was no constitutional limit to the continuance of a Parliament but the will of the Crown: but under the Statute 1 Geo. I. c. 38, commonly known as the Septennial Act, it ceases to exist after seven years from the day on which, by the writ of summons, it was appointed to meet. Before the Revolution of 1688, a Parliament was dissolved by the demise of the Crown:[1] but by the 7 & 8 Will. III. c. 15, and by the 6 Anne, c. 37, a Parliament was determined six months after the demise of the Crown,[2] and so the law continued until, by the Reform Act of 1867, it was wisely provided that the Parliament in being, at any future demise of the Crown, shall not be determined by such demise, but shall continue as long as it would have otherwise continued, unless dissolved by the Crown.[3]

Parliament is usually dissolved by proclamation under the great seal, after having been prorogued to a certain day. This proclamation is issued by the Queen, with the advice of her privy council; and announces that the Queen has given order to the lord chancellor of Great Britain and the lord chancellor of Ireland to issue out writs in due form, and

[1] Blackstone, Com. i. 177.

[2] Even the Privy Council expired at the demise of the Crown, and its members were re-appointed in the new reign, and Queen Anne omitted the names of the Whig chiefs, Somers, Halifax, and Orford. Lord Stanhope, Reign of Anne, p. 44.

[3] 30 & 31 Vict. c. 102, s. 51.

according to law, for calling a new Parliament; and that the writs are to be returnable on a certain day.

Since the dissolution of the 28th March 1681, by Charles II., the sovereign had not dissolved Parliament in person until the 10th June 1818, when it was dissolved by the Prince Regent in person.[1] Parliament has not since been dissolved in that form; but proceedings not very dissimilar have occurred in recent times. On the 22nd April 1831, William IV., having come down to prorogue Parliament, said, "I have come to meet you for the purpose of proroguing Parliament, with a view to its *immediate dissolution*;"[2] and Parliament was dissolved by proclamation on the following day. On the 17th July 1837, Parliament was prorogued and dissolved on the same day.[3] On the 23rd July 1847, the Queen, in proroguing Parliament, announced her intention immediately to dissolve it; and it was accordingly dissolved by proclamation on the same day, and the writs were despatched by that evening's post.[4] The same course has also been adopted on later occasions, and is now the ordinary practice.[5]

Assembling of Parliament after dissolution.

The interval between a dissolution and the assembling of the new Parliament varies according to the period of the year, the state of public business, and the political conditions under which an appeal to the people may have become necessary. When the Session has been concluded, and no question of ministerial confidence or responsibility is at issue, the recess is generally continued, by prorogations, until the usual time for the meeting of Parliament.[6]

[1] 73 Com. J. 427.

[2] 86 Ib. 517.

[3] 92 Ib. 671; 93 Ib. 3.

[4] 102 Ib. 960; 103 Ib. 3.

[5] 21st March 1857; 23rd April 1859; 6th July 1865; 26th January 1874; and 24th March 1880.

[6] In 1807, Parliament was dissolved on 27th May, and met 27th November. In 1818, Parliament was dissolved 10th June, and met for despatch of business 14th January. In 1826, Parliament was dissolved 2nd June, and met 14th November. In 1847, Parliament was dissolved 25th July, and was not intended to meet until February, but was assembled 18th November, in consequence of the commercial crisis. In 1865, Parliament was dissolved 6th July,

In addition to these several powers of calling a Parliament, appointing its meeting, directing the commencement of its proceedings, determining them from time to time by prorogation, and finally of dissolving it altogether, the Crown has other parliamentary powers, which will hereafter be noticed in treating of the functions of the two houses.

House of Lords.

Peers of the realm enjoy rights and exercise functions in five distinct characters: First, they possess, individually, titles of honour which give them rank and precedence; secondly, they are, individually, hereditary counsellors of the Crown; thirdly, they are, collectively, together with the lords spiritual, when not assembled in Parliament, the permanent council of the Crown; fourthly, they are, collectively, together with the lords spiritual, when assembled in Parliament, a court of judicature; and lastly, they are, conjointly with the lords spiritual and the Commons, in Parliament assembled, the legislative assembly of the kingdom, by whose advice, consent, and authority, with the sanction of the Crown, all laws are made.[1]

Peers of the realm.

Judicature of the Lords.

The most distinguishing characteristic of the Lords is their judicature, of which they exercise several kinds. They have a judicature in the trial of peers; and another in claims of peerage and offices of honour, under references from the Crown, but not otherwise.[2] Since the union with Scotland, they have also had a judicature for controverted elections of the sixteen representative peers of Scotland;[3] and by the act of union with Ireland all questions touching the rotation or election of lords spiritual or temporal of Ireland were to be

and met 1st February. In 1868, Parliament was dissolved early in November, and met on the 10th December. In 1874, Parliament was dissolved on the 26th January, and met on the 5th March. In 1880, Parliament was dissolved on the 24th March and met on the 29th April.

[1] See 1 Rep. Dig. of Peerage, 14.

[2] See Knolly's case, 12 St. Tr. 1167–1207. 1 Lord Raym. 10. Salk. 509. Carth. 297. 2 Lord Campbell, Lives of Ch. Just. 148. Lord Campbell's Speeches, 326. But see Debates and Proceedings upon the Wensleydale Life Peerage, 1856.

[3] Act of the Parl. of Scotland, 5 Ann. c. 8. 6 Ann. c. 23. 10 & 11 Vict. c. 52.

decided by the House of Lords:[1] but part of this judicature was superseded in 1869, when Irish bishops ceased to have seats in Parliament. In addition to these special cases, they have a general judicature, as a supreme court of appeal from other courts of justice. This high judicial office has been retained by them as the ancient *consilium regis*, which, assisted by the judges, and with the assent of the King, administered justice in the early periods of English law.[2] Their appellate jurisdiction would also appear to have received statutory confirmation from the 14 Edw. III. c. 5, A.D. 1340. In the 17th century they assumed a jurisdiction, in many points, which has since been abandoned.[3] They claimed an original jurisdiction in civil causes, which was resisted by the Commons, and has not been enforced for the last century and a half. They claimed an original jurisdiction over crimes, without impeachment by the Commons: but that claim was also abandoned.[4] Their claim to an appellate jurisdiction over causes in equity, on petition to themselves, without reference from the Crown, has been exercised since the reign of Charles I.; and notwithstanding the resistance of the Commons in 1675,[5] they have since remained in undisputed possession of it. They had a jurisdiction over causes brought, on writs of error, from the courts of law, originally derived from the Crown, and confirmed by statute,[6] and to hear appeals from courts of equity. In 1873, indeed, their ancient appellate jurisdiction was surrendered by the Judicature Act: but before that Act came into operation this provision was repealed;[7] their jurisdiction was restored and defined, while their efficiency as a court of appeal was increased by the immediate addition of two lords of appeal in ordinary, and of a third lord of appeal, upon the death or resignation of

[1] 4th Art. of Union. 89 Lords' J. 289. 295. 329, &c.

[2] Hale, Jurisdiction of the House of Lords, c. 14. Barrington on the Statutes, 244.

[3] See 5 Howell, St. Tr. 711. 4 Parl. Hist. 431. 443. 3 Hatsell, 336.

[4] 8 Com. J. 38.

[5] See 6 Howell, St. Tr. 1121.

[6] 27 Eliz. c. 8. See also Intr. to Sugden, Law of Real Prop. 2.

[7] 37 & 38 Vict. c. 83.

two paid judges of the Judicial Committee of the Privy Council. The power of hearing causes during a prorogation or dissolution of Parliament was also given. An appeal now lies to the House of Lords from the Court of Appeal in England, and from any Court in Scotland and Ireland from which a writ of error or appeal previously lay by common law or by statute.[1] But appeals in ecclesiastical, maritime, or prize causes, and colonial appeals, both at law and in equity, are determined by the privy council.[2] The powers which are incident to them, as a court of record, will claim attention in other places.

Judges' opinions.

A valuable part of the ancient constitution of the *consilium regis* has never been withdrawn from the Lords, viz. the assistance of the judges, the Master of the Rolls, the attorney and solicitor general, and the Queen's learned counsel being serjeants, who are still summoned to attend the House of Lords by writs from the Crown, and for whom places are assigned on the woolsacks:[3] but the opinion of the judges alone is now desired on points of law, on which the Lords wish to be informed.

Impeachments.

In passing Acts of attainder and of pains and penalties, the judicature of the entire Parliament is exercised; and there is another high parliamentary judicature in which both houses also have a share. In impeachments the Commons, as a great representative inquest of the nation, first find the crime, and then, as prosecutors, support their charge before the Lords; while the Lords, exercising at once the functions of a high court of justice and of a jury, try and adjudicate upon the charge preferred.

Impeachment by the Commons is a proceeding of great importance, involving the exercise of the highest judicial powers by Parliament; and though in modern times it has

[1] Appellate Jurisdiction Act, 1876. Judicature (Ireland) Act, 1877.

[2] Hargrave's Preface to Hale's Jurisdiction of the Lords.

[3] 31 Hen. VIII. c. 10, s. 8. Lords' S. O. Nos. 6, 7. 4th Inst. 4. The order of Queen's Serjeants, however, is soon likely to be extinct.

rarely been resorted to, in former periods of our history it was of frequent occurrence. The earliest recorded instance of impeachment by the Commons at the bar of the House of Lords was in 1376, in the reign of Edward III. Before that time, the Lords appear to have tried both peers and commoners for great public offences, but not upon complaints addressed to them by the Commons. During the next four reigns, cases of regular impeachment were frequent; but no instances occurred in the reigns of Edward IV., Henry VII., Henry VIII., Edward VI., Queen Mary, or Queen Elizabeth. "The institution had fallen into disuse," says Hallam, "partly from the loss of that control which the Commons had obtained under Richard II. and the Lancastrian kings, and partly from the preference the Tudor princes had given to bills of attainder or of pains and penalties, when they wished to turn the arm of Parliament against an obnoxious subject."[1]

Prosecutions also in the Star Chamber, during that time, were perpetually resorted to by the Crown for the punishment of state offenders. In the reign of James I., the practice of impeachment was revived, and was used with great energy by the Commons, both as an instrument of popular power, and for the furtherance of public justice. Between the year 1620, when Sir Giles Mompesson and Lord Bacon were impeached, and the Revolution in 1688, there were about 40 cases of impeachment. In the reigns of William III., Queen Anne, and George I., there were 15; and in the reign of George II., none but that of Lord Lovat, in 1746, for high treason. The last memorable cases are those of Warren Hastings, in 1788, and Lord Melville, in 1805. A description of the proceedings of both houses, in cases of impeachment, is reserved for a later part of this treatise.[2]

The Commons: their right of voting supplies.

The most important power vested in any branch of the legislature, is the right of imposing taxes upon the people, and of voting money for the exigencies of the public service.

[1] Const. Hist. 357.

[2] See Chap. XXIII.

It has been already noticed that the exercise of this right by the Commons, is practically a law for the annual meeting of Parliament for redress of grievances; and it may also be said to give to the Commons the chief authority in the state. In all countries the public purse is one of the main instruments of political power; but with the complicated relations of finance and public credit in England, the power of giving or withholding the supplies at pleasure, is one of absolute supremacy. The mode in which the Commons exercise their right, and the proceedings of Parliament generally in matters of supply, will be more conveniently explained in another chapter.[1]

Right of determining elections.

Another important power peculiar to the Commons, is that of determining all matters touching the election of their own members. This right had been regularly claimed and exercised since the reign of Queen Elizabeth, and probably in earlier times, although such matters had been ordinarily determined in chancery. Their exclusive right to determine the legality of returns and the conduct of returning officers in making them, was fully recognized in the case of Barnardiston *v.* Soame, by the Court of Exchequer Chamber in 1674,[2] by the House of Lords in 1689,[3] and also by the courts, in the cases of Onslow in 1680,[4] and of Prideaux *v.* Morris in 1702.[5] Their jurisdiction in determining the right of election was further acknowledged by Statute 7 Will. III. c. 7: but in regard to the rights of electors, a memorable contest arose between the Lords and Commons in 1704. Ashby, a burgess of Aylesbury, brought an action at common law against William White and others, the returning officers of that borough, for having refused to permit him to give his vote at an election. A verdict was obtained by him: but it was moved in the Court of Queen's Bench, in arrest of judgment, "that this action did not lie;"

Case of Ashby and White.

[1] See Chap. XXI.

[2] 6 Howell, St. Tr. 1092.

[3] Ib. 1119.

[4] 2 Vent. 37. 3 Lev. 39.

[5] 2 Salk. 502. 1 Lutw. 82. 7 Mod. 13.

and in opposition to the opinion of Lord Chief Justice Holt, judgment was entered for the defendant, but was afterwards reversed by the House of Lords upon a writ of error. Upon this the Commons declared that "the determination of the right of election of members to serve in Parliament is the proper business of the House of Commons, which they would always be very jealous of, and this jurisdiction of theirs is uncontested; that they exercise a great power in that matter, for they oblige the officer to alter his return according to their judgment; and that they cannot judge of the right of election without determining the right of the electors; and if electors were at liberty to prosecute suits touching their right of giving voices, in other courts, there might be different voices in other courts, which would make confusion, and be dishonourable to the House of Commons; and that therefore such an action was a breach of privilege." In addition to the ordinary exercise of their jurisdiction, the Commons relied upon the Act 7 Will. III. c. 7, by which it had been declared that "the last determination of the House of Commons concerning the right of elections is to be pursued." On the other hand, it was objected that "there is a great difference between the right of the electors and the right of the elected: the one is a temporary right to a place in Parliament, *pro hâc vice;* the other is a freehold or a franchise. Who has a right to sit in the House of Commons may be properly cognizable there; but who has a right to choose, is a matter originally established, even before there is a Parliament. A man has a right to his freehold by the common law, and the law having annexed his right of voting to his freehold, it is of the nature of his freehold, and must depend upon it. The same law that gives him his right must defend it for him, and any other power that will pretend to take away his right of voting may as well pretend to take away the freehold upon which it depends." These extracts from the report of a Lords' Committee, 27th March 1704, upon the conferences

and other proceedings in the case of Ashby and White, give an epitome of the main arguments upon which each party in the contest relied.[1]

Case of the Aylesbury men.

Encouraged by the decision of the House of Lords, five other burgesses of Aylesbury, now familiarly known as "the Aylesbury men," commenced actions against the constables of their borough, and were committed to Newgate, by the House of Commons, for a contempt of their jurisdiction. They endeavoured to obtain their discharge on writs of *habeas corpus*, but did not succeed. The Commons declared their counsel, agents, and solicitors guilty of a breach of privilege, and committed them also. Resolutions condemning these proceedings were passed by the Lords,—conferences were held, and addresses presented to the Queen. At length the Queen prorogued Parliament, and thus put an end to the contest, and to the imprisonment of the Aylesbury men and their counsel. The plaintiffs, no longer impeded by the interposition of privilege, and supported by the judgment of the House of Lords, obtained verdicts and execution against the returning officers.

Later cases.

The question which was agitated at that time has never since arisen, so as to bring the Commons into conflict with the courts of law. Complaints, however, have been made to the house, of proceedings in courts of law, having reference to elections;[2] and in 1767, certain electors of the county of Pembroke having brought actions of trespass on the case against the high sheriff for refusing their votes, were ordered to attend the house: but having discontinued their actions, no further proceedings were taken against them.[3] In 1857, a complaint was made, by petition, that certain voters had

[1] See all the proceedings collected, in App. to 3rd vol. of Hatsell's Precedents. The whole of this report, together with another of the 13th March, may be read with interest.

[2] Rye case, 17th November 1704; 14 Com. J. 425; Penryn case, 22nd February 1710; 16 Com. J. 514 (no further proceedings on these cases).

[3] 31 Com. J. 211. 279. 293. See also cases of the Mayor of Hastings, Easter Term, 1786, and the Mayor of Abingdon, 1847; Price *v.* Fletcher, 4 C. P. Rep.

brought actions against the returning officer of the borough of Sligo for refusing their votes at the last election: but the committee to whom the matter was referred reported that there were no circumstances affecting the privileges of the house.[1] In 1784, Mr. Fox obtained a verdict, with damages, against the high bailiff of Westminster, for vexatiously withholding his return when he had a majority of votes; and this proceeding, being clearly free from any question of privilege, did not call for the interposition of Parliament.[2] The Commons continued to exercise (what was not denied to them by the House of Lords) the sole right of determining whether electors had the right to vote, while inquiring into the conflicting claims of candidates for seats in Parliament; and specific modes for trying the right of election by the house were prescribed by statutes, and its determination declared to be final and conclusive.[3] Meanwhile the various rights of election, which formerly rested upon the decision of the house, were defined by the statute law; and, at length, in 1868, the house delegated its judicature in controverted elections to the courts of law:[4] but without relinquishing its general jurisdiction in cases not otherwise provided for by statute.[5]

New writs issued by order of the House of Commons.

Although all writs are issued out of Chancery, every vacancy after a general election is supplied by the authority of the Commons. The Speaker is empowered to issue warrants to the clerk of the crown to make out new writs; and when it has been determined that a return should be amended, the clerk of the crown is ordered to attend the house, and amend it accordingly. During the sitting of the house, vacancies are supplied by warrants issued by the Speaker, by order of the house; and during a recess, after a prorogation

[1] 146 Hans. Deb. 3rd Ser. 1557; 112 Com. J. 310. 314. 340.

[2] 3 Hughes' Hist. 245.

[3] 9 Geo. IV. c. 22, s. 54, &c.

[4] Election Petitions Act, 1868; amended by Parliamentary Elections and Corrupt Practices Act, 1879, by which the trial of election petitions are conducted by two judges instead of one.

[5] See *infra*, Chapter XXII., on Elections.

or adjournment, he is required to issue warrants, in certain cases, without an order.[1]

Expulsion of members does not create disability.

But notwithstanding their extensive jurisdiction in regard to elections, the Commons have no control over the eligibility of candidates, except in the administration of the laws which define their qualifications. No power exercised by the Commons is more undoubted than that of expelling a member from the house, as a punishment for grave offences; yet expulsion, though it vacates the seat of a member, and a new writ is immediately issued, does not create any disability to serve again in Parliament. John Wilkes was expelled, in 1764, for being the author of a seditious libel. In the next Parliament (3rd February 1769) he was again expelled for another libel; a new writ was ordered for the county of Middlesex, which he represented, and he was re-elected without a contest; upon which it was resolved, on the 17th of February, "that, having been in this session of Parliament expelled this house, he was and is incapable of being elected a member to serve in this present Parliament."[2] The election was declared void: but Mr. Wilkes was again elected, and his election was once more declared void, and another writ issued. A new expedient was now tried: Mr. Luttrell, then a member, accepted the Chiltern Hundreds, and stood against Mr. Wilkes at the election, and, being defeated, petitioned the house against the return of his opponent. The house resolved that, although a majority of the electors had voted for Mr. Wilkes, Mr. Luttrell ought to have been returned, and they amended the return accordingly. Against this proceeding the electors of Middlesex presented a petition, without effect, as the house declared that Mr. Luttrell was duly elected. The whole of these proceedings were, at the time, severely condemned by public opinion, and proved by unanswerable arguments[3] to be illegal; and on the 3rd of

[1] 24 Geo. III. sess. 2, c. 26. 52 Geo. III. c. 144. 21 & 22 Vict. c. 110. See also Chapter XXII., on Elections.

[2] 32 Com. J. 229.

[3] See particularly the speech of Mr. Wedderburn, 1 Cavendish Deb.

May 1782, the resolution of the 17th of February 1769 was ordered to be expunged from the journals, as "subversive of the rights of the whole body of electors of this kingdom."[1] In 1882, Mr. Bradlaugh, having been expelled, was immediately returned by the electors of Northampton; and no question was raised as to the validity of his return.[2]

Disabilities formerly inflicted by the Commons.

Expulsion and perpetual disability had been part of the punishments inflicted upon Arthur Hall in 1580; and on the 27th May 1641, Mr. Taylor, a member, was expelled, and adjudged to be for ever incapable of being a member of the house.[3] And in the same year, Mr. Benson was resolved to be "unfit and incapable ever to sit in Parliament, or to be a member of this house hereafter;"[4] and Mr. Trelawny was "disabled from sitting as a member of this house during this Parliament."[5] During the Long Parliament, incapacity for serving in the Parliament then assembled was frequently part of the sentence of expulsion.[6] On the Restoration, in 1660, the house went so far as to expel Mr. Wallop, and resolve him to be "made incapable of bearing any office or place of public trust in this kingdom."[7] In 1711, Mr. Robert Walpole, on being re-elected after his expulsion, was declared incapable of serving in the present Parliament, having been expelled for an offence.[8] But all these cases can only be regarded as examples of an excess of their jurisdiction by the Commons; for one house of Parliament cannot create a disability unknown to the law.

Suspension of members.

A temporary disability, however, has been sometimes created by the suspension of members from the service of the house. On the 27th April 1641, Mr. Gervaise Hollis, a member, was suspended the house during the Session.[9] On the 6th November 1643, Sir Norton Knatchbull was suspended the house

352. See also 2 May, Const. Hist. 2–26 (7th Ed.).

[1] 38 Com. J. 977.
[2] 137 Ib. 62.
[3] 2 Ib. 158.
[4] Ib. 301.
[5] Ib. 473.
[6] Ib. 700. 729, &c.
[7] 8 Ib. 60.
[8] 17 Ib. 128.
[9] 2 Ib. 128.

during the pleasure of the house.[1] On the 26th January 1648, Mr. Frye was suspended from sitting in the house, and executing his duty there, as a member, until he shall give satisfaction to the house.[2] On the 3rd July 1661, Mr. Love, not having received the sacrament of the Lord's Supper, was suspended until he shall communicate.[3] On the 10th November 1669, Sir George Carteret was suspended the house.[4] On the 8th April 1670, Sir John Prettiman was suspended his sitting in the house, and from all privileges as a member, until he shall produce Robert Humes, who had falsely claimed privilege as his servant.[5] And on the 9th March 1692, Mr. Cullingford was suspended from the benefit of the privilege of the house until he shall attend in his place.[6] The temporary suspension of a member from the service of the house is a modified form of punishment, by which the rights of electors are no more infringed than if the house exercised its unquestionable power of imprisonment. For nearly two centuries, however, the house appears to have preferred the latter punishment, no case of suspension having occurred since 1692. But on the 25th July 1877, it was laid down from the chair that any member guilty of a contempt "would be liable to such punishment, whether by censure, by suspension from the service of the house, or by commitment, as the house may adjudge."[7] And by a Standing Order 28th February, amended 22nd November 1882, suspension was adopted for the punishment of the offence of disregarding the authority of the chair, or of obstruction; and has since been imposed in numerous cases.[8]

Grounds of expulsion.

Expulsion is generally reserved for offences which render members unfit for a seat in Parliament, and which, if not

[1] 3 Com. J. 302.
[2] 6 Ib. 123.
[3] 8 Ib. 289.
[4] 9 Ib. 120.
[5] 9 Ib. 156.
[6] 10 Ib. 846.
[7] 132 Ib. 375.
[8] See *infra*, Chap. XI. (Debate.)

so punished, would bring discredit upon Parliament itself. Members have been expelled, as being in open rebellion;[1] as having been guilty of forgery;[2] of perjury;[3] of frauds and breaches of trust;[4] of misappropriation of public money;[5] of conspiracy to defraud;[6] of corruption in the administration of justice,[7] or in public offices,[8] or in the execution of their duties as members of the house;[9] of conduct unbecoming the character of an officer and a gentleman;[10] and of contempts, libels and other offences committed against the house itself.[11]

Evidence of offences.

Where members have been legally convicted of any offences, it has been customary to require the record of conviction to be laid before the house.[12] In other cases the proceedings have been founded upon reports of commissions, or committees of the house, or other sufficient evidence.[13] And it has been customary to order the member, if absent, to attend in his place, before an order is made for his expulsion.[14]

A member has also been expelled who has fled from justice, without any conviction, or judgment of outlawry. On the 18th July 1856, a true bill was found against James Sadleir for fraud, and a warrant was then issued for his apprehension. On the 24th, a motion was made for his expulsion, on the ground of his having absconded, which, being con-

[1] Mr. Foster and Mr. Carnegy, 1715; 18 Ib. 336. 467.

[2] Mr. Ward, 1726; 20 Ib. 702.

[3] Mr. Atkinson, 1783; 39 Ib. 770.

[4] South Sea Directors, 1720; 19 Ib. 406. 412, 413. Commissioners of Forfeited Estates, 1732; 21 Ib. 871. Benjamin Walsh, 1812; 67 Ib. 176; Lord Colchester's Diary, ii. 373.

[5] Earl of Ranelagh, 1702. 14 Com. J. 171. Mr. Hunt, 1810; 65 Ib. 433.

[6] Lord Cochrane and Mr. Cochrane Johnstone, 1814; 69 Ib. 433.

[7] Sir J. Bennet, 1621; 1 Ib. 588.

[8] Mr. Walpole and Mr. Carbonell, 1711; 17 Ib. 30. 97.

[9] Mr. Ashburnham, 1667; 9 Ib. 24. Sir J. Trevor (Speaker), 1694; 11 Ib. 274; 5 Parl. Hist. 900–910. Mr. Hungerford, 1695; 11 Com. J. 283.

[10] Col. Cawthorne, 1796; 51 Ib. 552.

[11] 1 Com. J. 917; 2 Ib. 301. 537; 9 Ib. 431; 17 Ib. 513; 18 Ib. 411; 20 Ib. 391; 137 Ib. 61. See also Report of Precedents, 1807.

[12] 39 Com. J. 770; 67 Ib. 176; 69 Ib. 433.

[13] 11 Ib. 283; 20 Ib. 141. 391; 21 Ib. 870; 65 Ib. 433, &c.

[14] 51 Ib. 661; 65 Ib. 399; 67 Ib. 176; 69 Ib. 433; 111 Ib. 367.

sidered premature, the house refused to entertain. But on the 16th February 1857, when the reports of the Crown solicitor and officers of the constabulary, showing the measures which had since been ineffectually taken to apprehend Mr. Sadleir, and bring him to trial, had been laid before the house, he was expelled, as having fled from justice.[1]

[5] 143 Hans. Deb., 3rd Ser. 1386; 144 Ib. 702; 111 Com. J. 379; 112 Ib. 48.

CHAPTER III.

GENERAL VIEW OF THE PRIVILEGES OF PARLIAMENT: POWER OF COMMITMENT BY BOTH HOUSES, FOR BREACHES OF PRIVILEGE. CAUSES OF COMMITMENT CANNOT BE INQUIRED INTO BY COURTS OF LAW: NOR THE PRISONERS BE ADMITTED TO BAIL. ACTS CONSTRUED AS BREACHES OF PRIVILEGE. DIFFERENT PUNISHMENTS INFLICTED BY THE TWO HOUSES.

Privileges enjoyed by the law and custom of Parliament and by statute.

Both houses of Parliament enjoy various privileges in their collective capacity, as constituent parts of the High Court of Parliament; which are necessary for the support of their authority, and for the proper exercise of the functions entrusted to them by the constitution. Other privileges, again, are enjoyed by individual members; which protect their persons and secure their independence and dignity.

Some privileges rest solely upon the law and custom of Parliament, while others have been defined by statute. Upon these grounds alone all privileges whatever are founded. The Lords have ever enjoyed them, simply because "they have place and voice in Parliament;"[1] but a practice has obtained with the Commons, that would appear to submit their privileges to the royal favour. At the commencement of every Parliament since the 6th of Henry VIII., it has been the custom for the Speaker,

Speaker's petition.

"In the name, and on behalf of the Commons, to lay claim by humble petition to their ancient and undoubted[2] rights and privi-

[1] Hakewel, 82.

[2] See the memorable protestation of the Commons, in answer to James I., who took offence at the words used by the speaker in praying for their privileges as "their antient and undoubted right and inheritance." 5 Parl. Hist. 512; 2 Proceedings and Debates of the Commons, 1620-1, 359.

eges; particularly that their persons and servants[1] might be free from arrests and all molestations; that they may enjoy liberty of speech in all their debates; may have access to her Majesty's royal person whenever occasion shall require; and that all their proceedings may receive from her Majesty the most favourable construction."

To which the Lord Chancellor replies, that

"Her Majesty most readily *confirms* all the rights and privileges which have ever been granted to or conferred upon the Commons, by her Majesty or any of her royal predecessors."[2]

The authority of the Crown in regard to the privileges of the Commons, is further acknowledged by the report of the Speaker to the house, "that their privileges have been confirmed in as full and ample a manner as they have been heretofore *granted* or *allowed* by her Majesty, or any of her royal predecessors."[3]

This custom probably originated in the ancient practice of confirming laws in Parliament, that were already in force, by petitions from the Commons, to which the assent of the king was given, with the advice and consent of the Lords. In Atwyll's case, 17 Edward IV., the petition of the Commons to the king states that their "liberties and franchises your highness to your lieges, called by your authority royal to this your high Court of Parliament, for the shires, cities, burghs, and five ports of this realm, by your authority royal, at commencement of this Parliament, graciously have ratified and confirmed to us, your said Commons, now assembled by your said royal commandment in this your said present Parliament."[4]

But whatever may have been the origin and cause of this custom, and however great the concession to the Crown may

[1] The claim of privilege in respect of their *estates* was omitted for the first time in 1853. The claim for servants was retained, as it was doubtful whether certain privileges might not attach to the servants of members, in attendance at the house; and the officers and servants of the house are still privileged, within its precincts. 108 Com. J. 7; 2 Hatsell, 225; Lord Colchester's Diary, i. 64.

[2] 73 Lords' J. 571; 80 Ib. 8, &c.

[3] 112 Com. J. 119, &c.

[4] 6 Rot. Parl. 191.

appear, the privileges of the Commons are nevertheless independent of the Crown, and are enjoyed irrespectively of their petition. Some have been confirmed by statute, and are, therefore, beyond the control either of the Crown or of any other power but Parliament; while others, having been limited or even abolished by statute, cannot be granted or allowed by the Crown.

Every privilege will be separately treated, beginning with such as are enjoyed by each house collectively, and proceeding thence to such as attach to individual members; but, before these are explained, two of the points enumerated in the Speaker's petition may be disposed of, as being matters of courtesy rather than privilege. The first of these is "freedom of access to her Majesty;" and the second "that their proceedings may receive a favourable construction."

Freedom of access for the Commons.

1. The first request for freedom of access to the sovereign is recorded in the 28th Henry VIII.; "but," says Elsynge, "it appeareth plainly they ever enjoyed this, even when the kings were absent from Parliament;" and in the "times of Richard II., Henry IV., and downwards, the Commons, with the Speaker, were ever admitted to the king's presence in Parliament to deliver their answers; and oftentimes, under Richard II., Henry IV., and Henry VI., they did propound matters to the king which were not given them in charge to treat of."[1] The privilege of access is not enjoyed by individual members of the House of Commons, but only by the house at large, with their Speaker; and the only occasion on which it is exercised, is when an address is presented to her Majesty by the whole house. Without this privilege, it is undeniable that the Queen might refuse to receive such an address presented in that manner; and that so far as the attendance of the whole house may give effect to an address, it is a valuable privilege. But addresses of the house may be communicated by any members who have

[1] Elsynge, 175, 176.

ccess to her Majesty as privy councillors; and thus the same onstitutional effect may be produced, without the exercise f the privilege of the house.

The only right claimed and exercised by individual mem- ers, in availing themselves of the privilege of access to her Majesty, is that of accompanying the Speaker with addresses, nd entering the presence of royalty, in their ordinary attire. Such a practice is, perhaps, scarcely worthy of notice, but it s probably founded upon the concession to the House of Commons, of a free access to the throne, which may be sup- osed to entitle them, as members, to dispense with the forms nd ceremonies of the court.[1]

Free access for Peers.

Far different is the privilege enjoyed by the House of Peers. Not only is that house, as a body, entitled to free access to the throne, but each peer, as one of the hereditary ounsellors of the Crown, is individually privileged to have n audience of her Majesty.[2]

Favourable construction of the Commons' proceedings.

2. That all the proceedings of the Commons may receive rom her Majesty the most favourable construction, is con- lucive to that cordial co-operation of the several branches f the legislature which is essential to order and good govern- ment; but it cannot be classed among the privileges of Par- iament. It is not a constitutional right, but a personal ourtesy; and if not observed, the proceedings of the house are guarded against any interference, on the part of the Crown, not authorized by the laws and constitution of the ountry. The occasions for this courtesy are also limited; as by the law and custom of Parliament the Queen cannot take notice of anything said or done in the house, but by the report of the house itself.[3]

Privileges of each house collectively.

Each house, as a constituent part of Parliament, exercises its own privileges independently of the other. They are en- joyed, however, not by any separate right peculiar to each,

[1] See also Chap. XVII., on Addresses.

[2] See 3 Lord Colchester's Diary, 604. 606, 607.

[3] 4 Inst. 15. See also *infra*, Chap. IV., on Freedom of Speech.

but solely by virtue of the law and custom of Parliament. There are rights or powers peculiar to each, as explained in the last chapter: but all privileges, properly so called, appertain equally to both houses. These are declared and expounded by each house; and breaches of privilege are adjudged and censured by each; but still it is the law of Parliament that is thus administered.

Law and custom of Parliament.

The law of Parliament is thus defined by two eminent authorities: "As every court of justice hath laws and customs for its direction, some the civil and canon, some the common law, others their own peculiar laws and customs, so the High Court of Parliament hath also its own peculiar law, called the *lex et consuetudo Parliamenti*."[1] This law of Parliament is admitted to be part of the unwritten law of the land, and as such is only to be collected, according to the words of Sir Edward Coke, "out of the rolls of Parliament and other records, and by precedents and continued experience;" to which it is added, that "whatever matter arises concerning either house of Parliament, ought to be discussed and adjudged in that house to which it relates, and not elsewhere."[2]

Hence it follows that whatever the Parliament has constantly declared to be a privilege, is the sole evidence of its being part of the ancient law of Parliament. "The only method," says Blackstone, "of proving that this or that maxim is a rule of the common law, is by showing that it hath always been the custom to observe it;" and "it is laid down as a general rule that the decisions of courts of justice are the evidence of what is common law."[3] The same rule is strictly applicable to matters of privilege, and to the expounding of the unwritten law of Parliament.

New privileges may not be created.

But although either house may expound the law of Parliament, and vindicate its own privileges, it is agreed that no new privilege can be created. In 1704, the Lords

[1] Coke, 4 Inst. 15. 1 Blackstone, Comm. 163.

[2] 4 Inst. 15.

[3] 1 Comm. 68. 71.

communicated a resolution to the Commons at a conference, "That neither house of Parliament have power, by any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of Parliament;"[1] which was assented to by the Commons.[2]

In treating of the privileges of individual members, it will be shown that in the earlier periods of parliamentary history, the Commons did not always vindicate their privileges by their own direct authority: but resorted to the King, to special statutes, to writs of privilege, and even to the House of Lords, to assist them in protecting their members. It will be seen in what manner they gradually assumed their just position, as an independent part of the legislature, and at length established the present mode of administering the law of Parliament.

Breach of privilege a contempt of the High Court of Parliament.

Both houses now act upon precisely the same grounds in matters of privilege. They declare what cases, by the law and custom of Parliament, are breaches of privilege: and punish the offenders by censure or commitment, in the same manner as courts of justice punish for contempt.[3] The modes of punishment may occasionally differ, in some respects, in consequence of the different powers of the two houses: but the principle upon which the offence is determined, and the dignity of Parliament vindicated, is the same in both houses.

Commitment.

The right to commit for contempt, though universally acknowledged to belong equally to both houses, has often been regarded with jealousy when exercised by the Commons. This has arisen partly from the powers of judicature inherent in the Lords, which have endowed that house with the character of a high court of justice, and partly from the more active political spirit of the lower house. But the acts of the House of Lords, in its legislative capacity, ought not to be confounded with its judicature; nor should the

[1] 14 Com. J. 555. [2] Ib. 560. [3] 8 Grey's Debates, 232.

political composition of the House of Commons be a ground for limiting its authority. The particular acts of both houses should, undoubtedly, be watched with vigilance when they appear to be capricious or unjust: but it is unreasonable to cavil at privileges in general which have been long established by law and custom, and which are essential to the dignity and power of Parliament.

So essential to the functions of a legislature is the right to judge contempts of its authority, and to punish them, that in the United States, where the constitution is silent upon this subject, it has been repeatedly exercised, not only by the House of Representatives, but also by local legislatures; and has been upheld by the Supreme Court, on the ground of inherent right and necessity. Here there was no prescription or ancient custom to rely upon; and the silence of the constitution, whence all powers are derived, was a fact undoubtedly adverse to the claim.[1] The same power has also been exercised by colonial legislatures.[2]

By the Lords.

The power of the House of Lords to commit for contempt was questioned in the cases of the Earl of Shaftesbury,[3] in 1675, and of Flower,[4] in 1779: but was admitted without hesitation by the Court of King's Bench.

By the Commons.

The power of commitment by the Commons is established upon the ground and evidence of immemorial usage.[5] It

[1] See 2 Story's Comm. 305–317, and notes.

[2] Journ. of Leg. Assembly of Canada, 20th and 23rd April 1840; 12th March 1849; vol. 5, p. 119. 150; vol. 7, p. 148. 282. Journ. of House of Assembly of Prince Edward Island, 17th Feb. 1836; 19th March and 9th April 1846, &c. But on the 11th Aug. 1875, the Standing Orders Committee of the Legislative Assembly of New South Wales reported that the Assembly had no power to punish for a breach of its privilege, nor to enforce any order for the attendance of a person charged with such breach; and recommended that a bill should be introduced to define the privileges and powers of the Assembly, and to affix penalties for the breach of them. Votes of the Assembly.

[3] 6 Howell, St. Tr. 1269 *et seq.*

[4] 8 Durnf. & East, 314.

[5] Mr. Wynn states that nearly 1,000 instances of its exercise have occurred since 1547, the period at which the Journals commence (*Argument*, p. 7); and numerous cases have occurred since the publication of Mr. Wynn's treatise.

was admitted, most distinctly, by the Lords, at the conference between the two houses, in the case of Ashby and White, in 1704,[1] and it has been repeatedly recognised by the courts of law: viz. by eleven of the judges, in the case of the Aylesbury men;[2] by the Court of King's Bench, in Murray's case;[3] by the Court of Common Pleas in Crosby's case;[4] by the Court of Exchequer, in the case of Oliver (1771);[4] by the Court of King's Bench, in Burdett's case, in 1811;[5] in the case of Mr. Hobhouse, in 1819;[6] and in the case of the Sheriff of Middlesex, in 1840;[7] and lastly, by the Court of Exchequer Chamber, in Howard's case, in 1846.[8] The power is also virtually admitted by the Statute 1 James I. c. 13, s. 3, which provides that nothing therein shall "extend to the diminishing of any punishment to be hereafter, by censure in Parliament, inflicted upon any person."

Authority and protection of officers in executing orders of either house.

The right of commitment being thus admitted, it becomes an important question to determine what authority and protection are acquired by officers of either house, in executing the orders of their respective courts.

Any resistance to the serjeant-at-arms, or his officers, or others acting in execution of the orders of either house, has always been treated as a contempt; and the parties, in numerous instances, have suffered punishment accordingly.

Lords.

The Lords will not suffer any persons, whether officers of the house or others, to be molested for executing their orders,[9] or the orders of a committee,[10] and will protect them from actions.

On the 28th November 1768, the house being informed that an action had been commenced against Mr. Hesse, a justice of the peace for Westminster, who had acted under

[1] 17 Lords' J. 714.
[2] 2 Lord Raym. 1105; 3 Wils. 205.
[3] 1 Wils. 299 (1751).
[4] 3 Ib. 203 (1771).
[5] 14 East, 1.
[6] 2 Chit. Rep. 207; 3 Barn. & Ald. 420.
[7] 11 Adolphus & Ellis, 273.
[8] Printed Papers, 2nd Report, 1845 (305), (397); 1847 (39).
[9] 13 Lords' J. 104; 15 Ib. 565; 21 Ib. 190; 38 Ib. 649; 45 Ib. 340. 610.
[10] 13 Ib. 412.

the immediate orders of the house in suppressing a riot at the doors of the house, in Palace-yard, Biggs, the plaintiff, and Aylett, his attorney, were ordered to attend. On the 1st December, Biggs was attached, but afterwards discharged out of custody, with a reprimand, upon his signing a release to Mr. Hesse. Aylett was sent to Newgate, whence he was discharged on the 9th December, on his petition expressing contrition for his offence.[1]

On the 26th June 1788, Aldern, a constable, complained that, in pursuance of an order of the house, he had refused Mr. Hyde admittance to Westminster Hall during the trial of Warren Hastings, for which he had been indicted for an assault, and put to much expense. Mr. Hyde was ordered to attend, and committed for his offence. On the 30th June he was discharged, with a reprimand, on submitting himself to the house.[2]

The last case of the kind was that commonly known as "the umbrella case." On the 26th March 1827, complaint was made that John Bell had served F. Plass, a doorkeeper, when attending his duty in the house, with process from the Westminster Court of Requests, first to appear, and afterwards to pay a debt and costs awarded against him by that court, for the loss of an umbrella which had been left with the doorkeeper during a debate. Bell, and the clerks of the Court of Requests were summoned; the former was admonished, and the latter, not being aware of the nature of the complaint, were directed to withdraw.[3]

Commons.

In the case of Ferrers, in 1543, the Commons committed the sheriffs of London to the Tower, for having resisted their serjeant-at-arms, with his mace, in freeing a member who had been imprisoned in the Compter.[4]

In 1681, after a dissolution of Parliament, an action was brought against Topham, the serjeant-at-arms attending the Commons, for executing the orders of the house in arresting

[1] 32 Lords' J. 187. 197.
[2] 38 Ib. 249, 250, 251.
[3] 59 Ib. 199. 206.
[4] 1 Hatsell, 53.

certain persons. Topham pleaded to the jurisdiction of the court, but his plea was overruled, and judgment was given against him. The house declared this to be a breach of privilege, and committed Sir F. Pemberton and Sir T. Jones, who had been the judges in the case, to the custody of the serjeant-at-arms. This case will be referred to again for another purpose: but here it is adduced as a precedent of the manner in which officers have been supported by the house, in the execution of its orders.

In 1771, the House of Commons had ordered Miller, one of the printers concerned in publishing the debates, to be taken into custody; and he was arrested by a messenger, by virtue of the Speaker's warrant. The messenger was charged with an assault, and brought before the Lord Mayor and two aldermen at the Mansion-house, who set the prisoner at liberty, and committed the messenger of the house for an assault.[1] For this obstruction to the orders of the house, Mr. Alderman Oliver and the Lord Mayor (Brass Crosby), were committed to the Tower.[2]

Assistance of the civil power.

It cannot, indeed, be supposed that when the house has ordered the serjeant to execute a warrant, it will not sustain his authority, and punish those who resist him.[3] But a question still arises concerning the authority with which he is invested by law, when executing a warrant, properly made out by order of the house, and the assistance he is entitled to demand from the civil power. Both houses have always considered every branch of the civil government as bound to assist, when required, in executing their warrants and orders, and have repeatedly required such assistance.

In 1640, all mayors, justices, &c. in England and Ireland were ordered by the Commons to aid in the apprehension of Sir G. Ratcliffe.[4] In 1660, the serjeant was expressly

[1] 33 Com. J. 263; and Report of Committee, 1771.

[2] 33 Com. J. 285. 289. See also 1 May, Const. Hist. (7th ed.) 429.

[3] See other Cases, 9 Com. J. 341. 587; 13 Ib. 826.

[4] 2 Ib. 29.

empowered "*to break open a house* in case of resistance, and to call to his assistance the sheriff of Middlesex, and all other officers, as he shall see cause; and who are required to assist him accordingly."[1] And on the 23rd October 1690, the Lords authorized the black rod to break open the doors of any house, in the presence of a constable, and there search for and seize Lord Keveton.[2]

On the 24th January 1670, the House of Commons ordered a warrant to be issued for apprehending several persons who had resisted the deputy serjeant, and resolved "That the high sheriff of the county of Gloucester, and other officers concerned, are to be required by warrant from the Speaker, to be aiding and assisting in the execution of such warrant."[3] And again, on the 5th April 1679, it was ordered, "That the Speaker do issue out his warrant, requiring all sheriffs, bailiffs, constables, and all other his Majesty's officers and subjects, to be aiding and assisting to the serjeant-at-arms attending this house."[4] The Lords also have frequently required the assistance of the civil power in a similar manner.[5] And at the present time, by every Speaker's warrant to the serjeant-at-arms for taking a person into custody, "all mayors, sheriffs, under-sheriffs, bailiffs, constables, headboroughs, and officers of the house are required to be aiding and assisting in the execution thereof." Before the year 1810, however, no case arose in which the legal consequences of a Speaker's warrant, and the powers and duties of the serjeant-at-arms in the execution of it, were distinctly explained and recognized by a legal tribunal, as well as by the judgment of Parliament, in punishing resistance.

Breaking open outer doors.

In the case of Sir Francis Burdett, in 1810, a doubt arose concerning the power of the serjeant-at-arms to break into the dwelling-house of a person against whom a Speaker's

[1] 8 Com. J. 222.
[2] 14 Lords' J. 530.
[3] 9 Com. J. 193.
[4] 8 Ib. 586. See also 2 Ib. 371; 9 Ib. 353.
[5] 21st December 1678, 13 Lords' J. 429; 21st and 23rd October 1690, 14 Ib. 527. 530; 21st May 1747, 27 Ib. 118.

warrant had been issued. The serjeant-at-arms having, in execution of a warrant, been resisted and turned out of Sir Francis Burdett's private dwelling-house by force, required the opinion of the Attorney-General,

"whether he would be justified in breaking open the outer or any inner door of the private dwelling-house of Sir F. Burdett, or of any other person in which there is reasonable cause to suspect he is concealed, for the purpose of apprehending him; and whether he might take to his assistance a sufficient civil or military force for that purpose, such force acting under the direction of a civil magistrate; and whether such proceedings would be justifiable during the night as well as in the day-time."[1]

The Attorney-General answered all these questions, except the last, in the affirmative;[2] and acting upon his opinion, the serjeant-at-arms forced an entrance into Sir F. Burdett's house, down the area, and conveyed his prisoner to the Tower, with the assistance of a military force. Sir F. Burdett subsequently brought actions against the Speaker and the serjeant-at-arms, in the Court of King's Bench. The house directed the Attorney-General to defend them. The causes were both tried, and verdicts were obtained for the defendants.

Burdett *v.* Abbot.
Burdett *v.* Colman.

With respect to the authority of the serjeant-at-arms to break open the outer door of Sir F. Burdett's house, Lord Ellenborough said:

"Upon authorities the most unquestionable this point has been settled, that where an injury to the public has been committed, in the shape of an insult to any of the courts of justice, on which process of contempt is issued, the officer charged with the execution of such process may break open doors, if necessary, in order to execute it; and it cannot be contended that the houses of legislature are less strongly armed in point of protection and remedy against contempts towards them, than the courts of justice are."[3]

The opinion of the Attorney-General, upon which the serjeant

[1] 65 Com. J. 264; Ann. Reg. 1810, p. 344, &c. Hans. Deb. xvi. 257. 454, &c. Lord Colchester's Diary, ii. 245, &c.

[2] This opinion is printed in the Journal, and in the earlier editions of this work.

[3] 14 East, 157.

had acted, was thus confirmed. This judgment was afterwards affirmed, on a writ of error, by the Exchequer Chamber,[1] and ultimately by the House of Lords.[2]

Howard *v.* Gosset. 1st Action, 1842.

But although the serjeant-at-arms may force an entrance, he is not authorized to remain in the house, if the party be from home, in order to await his return. Mr. Howard, a solicitor, brought an action of trespass against certain officers of the House of Commons, who, in executing a Speaker's warrant for his apprehension, had stayed several hours in his house. The trial came on before Lord Denman, in the sittings at Westminster after Michaelmas term, 1842, when it appeared in evidence that the messengers had remained for several hours in the house, awaiting the return of Howard, after they knew that he was from home.

The Attorney-General who appeared for the defendants, admitted that, although they had a right to enter Howard's house, and to be in his house for a reasonable time to search for him, yet that they had no right to stay there until he returned; and Lord Denman directed the jury to say what just and reasonable compensation the officers should make for their trespass, which their warrant from the House of Commons did not authorize. A verdict was consequently given for the plaintiff on the second count, with 100*l.* damages.[3] The verdict proceeded entirely upon the ground of the defendants having exceeded their authority, and without any reference to the jurisdiction of the House of Commons: but if the officer should not exceed his authority, he will be protected by the courts, even if the warrant should not be technically formal, according to the rules by which the warrants of inferior courts are tested.

Howard *v.* Gosset. 2nd Action, 1843.

In 1843, Mr. Howard commenced another action of trespass against Sir W. Gosset, the serjeant-at-arms, and the Court of Queen's Bench gave judgment for the plaintiff, on the ground that the warrant was technically informal, and

[1] 4 Taunt. 401. [2] 5 Dow, 165. [3] Carrington & Marshman, 382.

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did not justify the acts of the serjeant. This judgment, however, was reversed by the Court of Exchequer Chamber, by whom the broader grounds on which they upheld the privileges of Parliament were thus expounded: "They construe the warrant as they would that of a magistrate; we construe it as a writ from a superior court; the authorities relied upon by them relate to the warrants and commitments of magistrates; they do not apply to the writs and mandates of superior courts, still less to those of either branch of the High Court of Parliament:" "Writs issued by a superior court, not appearing to be out of the scope of their jurisdiction, are valid of themselves, without any further allegation, and a protection to all officers and others in their aid, acting under them; and that, although on the face of them they be irregular, as a *capias* against a peeress (Countess of Rutland's case, 6 Coke's Rep. 54*a*), or void in form, as a *capias ad respondendum* not returnable the next term (Parsons *v.* Lloyd, 3 Wilson, 341); for the officers ought not to examine the judicial act of the court, whose servants they are, nor exercise their judgment touching the validity of the process in point of law, but are bound to execute it, and are therefore protected by it." [1]

Lines *v.* Russell. Warrant of Chairman of Election Committee.

In 1852, Mr. Lines, who had been committed to custody, by a warrant of the chairman of the St. Albans Election Committee, brought an action of trespass against Lord Charles Russell, the serjeant-at-arms. By the "Election Petitions Act 1848," s. 83, if any witness before an election committee "give false evidence, or prevaricate, or otherwise misbehave, in giving or refusing to give evidence, the chairman, by their direction," may commit him for a limited time. In this case the committee were of opinion that Mr. Lines had prevaricated, and he was committed by virtue of the following warrant:—

"Whereas a select committee appointed to try and determine the merits of the petition complaining of an undue election and return

[1] 10 Q. B. 359. Shorthand writer's notes, 1847 (39), p. 166. 168.

for the borough of St. Albans, have this day resolved that William Lines, of St. Albans, having been guilty of prevarication and misbehaviour before the said committee, be committed to the custody of the serjeant-at-arms attending this house. Now, these presents are therefore to require you to take into your custody the body of the said William Lines, and to keep him in such custody until twelve of the clock on Tuesday next."

It was argued that this warrant was invalid, as it did not state that Lines was a witness summoned to give evidence; nor that he had been sworn and examined; nor that he had prevaricated and misbehaved in giving evidence. It was also urged that the warrant ought not to be judged in the same manner as a warrant issued by the House of Commons, or any superior court, but as the warrant of a tribunal of inferior and limited jurisdiction constituted by Act of Parliament.

The Lord Chief Baron, however, having consulted some of the judges, was of opinion that the warrant was "entitled to precisely the same respect that would be paid to a warrant, order, or rule of the highest court in the country," and, "in reading the warrant, could entertain no reasonable doubt that the plaintiff was before the committee as a witness." He therefore directed the jury to find a verdict for the defendant. A bill of exceptions was tendered, but afterwards waived, and a rule moved to show cause why there should not be a new trial on the ground of misdirection. It appeared to be the opinion of the court that the warrant was to be regarded as proceeding from "a part of a superior court;" but a rule *nisi* was granted, which was subsequently discharged without any decision upon the question raised.[1]

Causes of commitment cannot be inquired into by the courts of law.

The power of commitment, with all the authority which can be given by law, being thus established, it becomes the key-stone of parliamentary privilege. Either house may adjudge that any act is a breach of privilege and contempt;

[1] Shorthand writer's notes, 25th June, 3rd and 13th November 1852. 16 Justice of the Peace, 491. 19 Law Times, 364.

and if the warrant recite that the person to be arrested has been guilty of a breach of privilege, the courts of law cannot inquire into the grounds of the judgment, but must leave him to suffer the punishment awarded by the High Court of Parliament, by which he stands committed.

Habeas Corpus.

The Habeas Corpus Act[1] is binding upon all persons whatever, who have prisoners in their custody; and it is therefore competent for the judges to have before them persons committed by the Houses of Parliament for contempt. There have been cases, indeed, in which writs of habeas corpus have been resisted: as in 1675, when the House of Commons directed the lieutenant of the Tower to make no return to any writ of habeas corpus relating to persons imprisoned by its order;[2] and in 1704, when similar directions were given to the serjeant-at-arms.[3] But these orders arose from the contests raging between the two houses; the first in regard to the judicature of the Lords, and the second concerning the jurisdiction of the Commons in matters of election; and it has since been the invariable practice for the serjeant-at-arms and others, by order of the house, to make returns to writs of habeas corpus.[4]

Prisoners cannot be bailed.

But although the return is made according to law, the parties who stand committed for contempt cannot be admitted to bail, nor the causes of commitment inquired into, by the courts of law. It had been so adjudged by the courts, during the Commonwealth,[5] in the cases of Captain Streater[6] and Sir Robert Pye.[7] The same opinion was expressed in Sheridan's case, by many of the first lawyers in the House of Commons, shortly after the passing of the

[1] 31 Car. II. c. 2.

[2] 9 Com. J. 356.

[3] 14 Ib. 565.

[4] 95 Ib. 25, 24th January 1840. 51 Hans. Deb., 3rd Ser. 550. 106 Com. J. 147.

[5] By order of the House of Commons, 23rd June 1647, the serjeant and keepers of persons are directed to make returns to writs of habeas corpus, with the causes of detention; but the Judges are not to proceed to bail or discharge the prisoners without notice to the House. 5 Com. J. 221. See also 2 Ib. 960.

[6] 5 Howell, St. Tr. 365. Styles, 415.

[7] 5 Howell, St. Tr. 948.

Habeas Corpus Act;[1] and it has been confirmed by resolutions of the House of Commons[2] and by numerous subsequent decisions of the courts of law; of which the following are some of the most remarkable.

Earl of Shaftesbury's case.

In 1675, Lord Shaftesbury, who had been committed by the House of Lords for a contempt, was brought before the Court of King's Bench, but remanded. In that case Lord Chief Justice Rainsford said,—

"He is in execution of the judgment given by the Lords for contempt; and therefore if he should be bailed, he would be delivered out of execution." And again, "This court has no jurisdiction of the cause; and therefore the form of the return is not considerable."[3]

Paty's case.

In the case of the Queen *v.* Paty,[4] objections had been taken to the form of the warrant, but Mr. Justice Gould said, "If this had been a return of a commitment by an inferior court, it had been naught, because it did not set out a sufficient cause of commitment; but this return being of a commitment by the House of Commons, which is superior to this court, it is not *reversible for form*." And Mr. Justice Powys, relying upon the analogy of commitments by the House of Commons and by the superior courts, said, "The House of Commons is a great court, and all things done by them are to be intended to have been *rite actæ*, and the matter need not be so specially recited in their warrants, by the same reason as we commit people by a rule of court of two lines; and such commitments are held good, because it is to be intended that we understand what we do." And in the record of this case it is expressed, that he was remitted to custody, "quod cognitio causæ captionis et detentionis prædicti Johannis Paty non pertinet ad curiam."

Murray's case.

In 1751, Mr. Murray was committed to Newgate by the

[1] A.D. 1680; 4 Hans. Parl. Hist. 1262.

[2] 9 Com. J. 356, 357; 12 Ib. 174; 14 Ib. 565. 599.

[3] 6 Howell, St. Tr. 1269. 1 Freem. 153. 1 Mod. 144. 3 Keble, 792.

[4] 2 Lord Raymond, 1109. Salk. 503.

Commons for a contempt, and was brought up to the Court of King's Bench by a habeas corpus. The court refused to admit him to bail, Mr. Justice Wright saying,—

"It need not appear to us what the contempt was for; if it did appear, we could not judge thereof; the House of Commons is superior to this court in this particular. This court cannot admit to bail a person committed for a contempt in any other court in Westminster Hall."[1]

In Brass Crosby's case, in 1771, Chief Justice De Grey said,— Brass Crosby's case.

"When the House of Commons adjudge anything to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment, in consequence, an execution; and no court can discharge or bail a person that is in execution by the judgment of any other court." And again, "Courts of justice have no cognizance of the acts of the Houses of Parliament, because they belong 'ad aliud examen.'"[2]

Again, in 1779, in the case of Flower, who had been committed by the House of Lords, for a libel on the Bishop of Llandaff, the prisoner applied in vain to the King's Bench to be admitted to bail; and Lord Kenyon, adopting the same view as other judges before him, said, "We were bound to grant this habeas corpus; but having seen the return to it, we are bound to remand the defendant to prison, because the subject belongs to 'aliud examen.'"[3] Flower's case.

In the case of Mr. Hobhouse, in 1819, Lord Chief Justice Abbott said,— Hobhouse's case.

"The power of commitment for contempt is incident to every court of justice, and more especially it belongs to the High Court of Parliament; and therefore it is incompetent for this court to question the privileges of the House of Commons, on a commitment for an offence which they have adjudged to be a contempt of those privileges." And again, "We cannot inquire into the form of the commitment, even supposing it to be open to objection on the ground of informality."[4]

[1] 1 Wils. 200.

[2] 19 Howell, St. Tr. 1137. 3 Wils. 188. 203.

[3] 8 Durnf. & East, 314.

[4] 2 Chit. Rep. 207. 3 Barn. & Ald. 420.

Sheriff of Middlesex.

In 1840 occurred the case of the Sheriff of Middlesex, who had been committed for executing a judgment of the Court of Queen's Bench against the printers of the House of Commons. In obedience to an order of the house,[1] the serjeant made a return to the writ, that he had taken and detained the sheriff by virtue of a warrant under the hand of the Speaker, which warrant was as follows:—

"Whereas the House of Commons have this day resolved that W. Evans, esq. and J. Wheelton, esq., Sheriff of Middlesex, having been guilty of a contempt and breach of the privileges of this house, be committed to the custody of the serjeant-at-arms attending this house; these are therefore to require you to take into your custody the bodies of the said W. Evans and J. Wheelton, and them safely to keep during the pleasure of this house; for which this shall be your sufficient warrant."

It was argued that, under the 56 Geo. III. c. 100, s. 3, the judges could examine into the truth of the facts set forth in the return, by affidavit or by affirmation; that the return was bad, because it did not state the facts on which the contempt arose; and that the warrant did not show a sufficient jurisdiction in those who issued it. No one appeared in support of the return, but the judges were unanimously of opinion that the return was good, and that they could not inquire into the nature of the contempt,[2] although it was notorious that the sheriff had been committed for executing a judgment of that court.

Case of W. Lines.

On the 7th April 1851, the serjeant acquainted the house that he had received W. Lines into his custody, by virtue of a warrant from the chairman of the St. Albans Election Committee; and that he had since been served with a writ of habeas corpus. He was directed to make a return to the writ, that he held the body of W. Lines by virtue of a warrant under the hand of the chairman of the election committee, and to annex the warrant to the return.[3] In the meantime, however, Lines had given his evidence satisfac-

[1] 95 Com. J. 25.
[2] 11 Adol. & Ellis, 273.
[3] 106 Com. J. 147, 148.

torily, and had been discharged out of custody before the return was made to the writ; and this fact was accordingly stated in the return.[1]

Parliament claims the same power as the courts.

From these cases it may now be considered as established, beyond all question, that the causes of commitment by either house of Parliament, for breaches of privilege and contempt, cannot be inquired into by courts of law; but that their "adjudication is a conviction, and their commitment, in consequence, an execution." Nor, indeed, could any other rule be adopted consistently with the independence of either house of Parliament. It has been seen that no greater power is claimed by Parliament than is readily conceded by the courts to one another, of which a comparatively recent example may be given. On the 18th November 1845, Mr. William Cobbett was brought before the Court of Common Pleas by the keeper of the Queen's Prison, in obedience to a writ of habeas corpus. It appeared that the prisoner was detained under a writ of attachment which had been issued against him by the Court of Chancery, for a contempt of that court, in not having paid certain costs. Upon which the court said, that "if Mr. Cobbett had any complaint to make against the legality of the detainer (and the court were far from saying that he might not have a just ground for such a complaint), he ought to apply to the Court of Chancery. This court had no right and no power to interfere with the proceedings of a court of co-ordinate jurisdiction, and therefore Mr. Cobbett must be remanded to his former custody."[2]

Commitment for offences beyond the jurisdiction of the house.

One qualification of this doctrine, however, must not be omitted. When it appears, upon the return of the writ, simply that the party has been committed for a contempt and breach of privilege, it has been universally admitted that it is incompetent for the courts to inquire further into the nature of the contempt: but if the causes of commitment were

[1] The return to the writ is entered, 106 Com. J. 153.

[2] See also *In re* W. Dimes, 17 January 1850, 14 Jurist, 198.

stated on the warrant, and appeared to be beyond the jurisdiction of the house, it is probable that their sufficiency would be examined. Lord Ellenborough, in his judgment in Burdett *v.* Abbot,[1] drew the distinction between such cases in the following manner:—

"If a commitment appeared to be for a contempt of the House of Commons generally, I would, neither in the case of that court nor of any other of the superior courts, inquire further: but if it did not profess to commit for a contempt, but for some matter appearing on the return, which could by no reasonable intendment be considered as a contempt of the court committing, but a ground of commitment palpably and evidently arbitrary, unjust and contrary to every principle of positive law or natural justice; I say, that in the case of such a commitment (if it ever should occur, but which I cannot possibly anticipate as ever likely to occur), we must look at it and act upon it as justice may require, from whatever court it may profess to have proceeded."

And in this opinion Lord Denman appears to have acquiesced, in the case of the Sheriff of Middlesex. The same principle may be collected from the judgment of the Exchequer Chamber in Gosset *v.* Howard, where it is said, "It is presumed, with respect to such writs as are actually issued by superior courts, that they are duly issued, and in a case in which they have jurisdiction, *unless the contrary appear on the face of them.*"

Not necessary to express any cause of commitment.

But it is not necessary that *any* cause of commitment should appear upon the warrant, nor that the prisoner should have been adjudged guilty of contempt. It has been a very ancient practice in both houses to send for persons in custody to answer charges of contempt;[2] and in the Lords, to order them to be attached and brought before the house to answer

Persons sent for in custody.

[1] 14 East, 1.

[2] 2 Lords' J. 201 (26th November 1597); Ib. 256 (17th Dec. 1601); Ib. 296; and for several other cases, see Calendar to Lords' Journ. (1509–1642), p. 117 *et seq.*, and 257 *et seq.* 11 Lords' J. 252, &c. 1 Com. J. 175. 680 (9th March 1623); 1 Ib. 886 (22nd April 1628); 9 Ib. 351 (2nd June 1675); 17 Ib. 493 (12th March 1713); 21 Ib. 705 (30th March 1731); 23 Ib. 146. 451, 452 (1738-9); 35 Ib. 323 (27th April 1775); 80 Ib. 445 (20th May 1825); 82 Ib. 561 (14th June 1827); 95 Ib. 30. 56. 59 (4th Feb. 1840). Mr. Grissell, 2nd March 1880; 135 Com. J. 70.

complaints of breaches of privilege, contempts and other offences.[1] This practice is analogous to writs of attachment upon mesne process in the superior courts, and is unquestionably legal.

In the judgment of the Court of Exchequer Chamber, in the case of Gosset *v.* Howard, already alluded to, it was stated that—

"Writs of attachment from superior courts do not state the previous steps of a charge of contempt, the rule of the court that they should issue, or the nature of the contempt." "It appears, indeed, that if a writ of a superior court *expressed no cause at all*, it would be legal, and the defendant not bailable, according to what Lord Coke says in the Brewers' case, 1 Roll. R. 134. It was a mistake to assert, as was done at the bar, that an adjudication of a contempt was a necessary part of every committal for a contempt, and that an attachment would be invalid without it. It is not so in the superior courts of common law, as has been stated, nor in the Court of Chancery, as Lord Lyndhurst has lately decided, after an inquiry into precedents."—(*Ex parte* Van Sandan, 1 Phillips' Rep. 605.)

Arrests without warrant.

In earlier times it was not the custom to prepare a formal warrant for executing the orders of the House of Commons: but the serjeant arrested persons with the mace, without any written authority;[2] and at the present day he takes strangers into custody who intrude themselves into the house, or otherwise misconduct themselves, in virtue of the general orders of the house, and without any specific instructions.[3] The Speaker has also directed the serjeant to take offenders into custody.[4]

Attachment by the Lords.

The Lords attach and commit persons by order, without any warrant. The order of the house is signed by the clerk of the Parliaments, and is the authority under which the officers of the house and others execute their duty.

Breaches of privilege defined.

Wilful disobedience to orders, within its jurisdiction, is

[1] See precedents collected in App. to 2nd Rep. on Printed Papers, 1845 (397), p. 104.

[2] Bainbrigge's case, 29th February 1575. 1 Com. J. 109.-1 Hatsell, 92. 2nd Rep. Printed Papers, 1845, p. vi.

[3] 29 Com. J. 23; 74 Ib. 537; 85 Ib. 461; 86 Ib. 323; 88 Ib. 246; 102 Ib. 99.

[4] 79 Ib. 483.

a contempt of any court, and disobedience to the orders and rules of Parliament, in the exercise of its constitutional functions, is treated as a breach of privilege. Insults and obstructions, also, offered to a court at large, or to any of its members, are contempts; and in like manner, by the law of Parliament, are breaches of privilege. It would be vain to attempt an enumeration of every act which might be construed into a contempt, because the orders of every court must necessarily vary with the circumstances of each case; but certain principles may be collected from the Journals, which will serve as general declarations of the law of Parliament.

Breaches of privilege may be divided into—1. Disobedience to general orders or rules of either house; 2. Disobedience to particular orders; 3. Indignities offered to the character or proceedings of Parliament; 4. Assaults or insults upon members, or reflections upon their character and conduct in Parliament; or interference with officers of the house in discharge of their duty.

Disobedience of general orders and rules.

1. Disobedience to any of the orders or rules which are made for the convenience or efficiency of the proceedings of the house, is a breach of privilege, the punishment of which would be left to the house, by those who are most jealous of parliamentary privilege. But if such orders should appear to clash with the common or statute law of the country, their validity is liable to question, as will be shown in a separate chapter[1] upon the jurisdiction of the courts in matters of privilege.

As examples of general orders, the violation of which will be regarded as breaches of privilege, the following may be sufficient.

Publication of debates.

The publication of the debates of either house has been repeatedly declared to be a breach of privilege, and especially false and perverted reports of them; and no doubt can exist

[1] Chapter VI.

that if either house desire to withhold their proceedings from the public, it is within the strictest limits of their jurisdiction to do so, and to punish any violation of their orders. The Lords have a Standing Order of the 27th February 1698, by which it is declared, Lords.

"That it is a breach of the privilege of this house, for any person whatsoever to print, or publish in print, anything relating to the proceedings of the house without the leave of this house."[1]

In 1801, Allan Macleod, a prisoner in Newgate, convicted for a misdemeanor, was fined 100*l.*, and committed to Newgate for six months after the expiration of his sentence, for publishing certain paragraphs purporting to be a proceeding of the house, which had been ordered to be expunged from the Journal, and the debate thereupon. He was also ordered to be kept in safe custody until he should pay the fine.[2] And John Higginbottom, for vending and publishing these paragraphs, was fined 6*s.* 8*d.*, and committed to Newgate for six months, and until he should pay the fine.[3] He afterwards presented a petition to be liberated, was brought to the bar, reprimanded, and discharged.[4] In the same year, H. Brown and T. Glassington were committed to the custody of the black rod, for printing and publishing, in the *Morning Herald*, some paragraphs purporting to be an account of what passed in debate, but which the house declared to be a scandalous misrepresentation.[5] Cases.

On the 13th July 1641, it was ordered by the Commons, "That no member shall either give a copy or publish in print anything that he shall speak here, without leave of the house."[6] And on the 22nd, "That all the members of the house are enjoined to deliver out no copy or notes of anything that is brought into the house, propounded or agitated in the house."[7] Commons.

[1] Lords' Journ. 27 Feb. 1698.
[2] 43 Lords' J. 105.
[3] Ib.
[4] Ib. 115. 225. 230.
[5] Ib. 60.
[6] 2 Com. J. 209. This proceeding arose out of the printing of a speech of Lord Digby.
[7] Ib. 220.

On the 28th March 1642, it was resolved,

"That what person soever shall print (or) sell any act or passages of this house, under the name of a diurnal or otherwise, without the particular license of this house, shall be reputed a high contemner and breaker of the privilege of Parliament, and so punished accordingly."[1]

The Commons have also ordered at different times,

"That no news-letter writers do, in their letters or other papers that they disperse, presume to intermeddle with the debates or any other proceedings of this house."[2] "That no printer or publisher of any printed newspapers do presume to insert in any such papers, any debates or any other proceedings of this house, or of any committee thereof."[3] "That it is an indignity to, and a breach of the privilege of this house, for any person to presume to give, in written or printed newspapers, any account or minute of the debates or other proceedings. That, upon discovery of the authors, printers or publishers of any such newspaper, this house will proceed against the offenders with the utmost severity."[4]

Other orders also to the same effect, though not verbally the same, have been repeated at different times.[5] These orders, however, have long since fallen into disuse; debates are daily cited in Parliament from printed reports—galleries have been constructed for the accommodation of reporters—committees have been appointed to provide increased facilities for reporting, and complaints have been repeatedly made, in both houses, that the reports of debates have sometimes not been sufficiently full. But when any wilful misrepresentation of the debate arises; or when on any particular occasion it may be necessary to enforce the restriction, the house will censure or otherwise punish the offender, whether he be a member of the house or a stranger admitted to its debates.[6] But as orders prohibiting the publication of debates are still

[1] 2 Com. J. 501.

[2] Orders, 22nd Dec. 1694. 11th Feb. 1695. 18th Jan. 1697. 3rd Jan. 1703. 23rd Jan. 1722. 11 Com. J. 193; Ib. 439; 12 Ib. 48; 14 Ib. 270; 20 Ib. 99.

[3] 20 Com. J. 99.

[4] 26 Feb. 1728; 21 Com. J. 238.

[5] 13th April 1738. 10th April 1753. 3rd March 1762. 23 Com. J. 148. 26 Ib. 754; 29 Ib. 207.

[6] 67 Com. J. 432. 74 Ib. 537. 88 Ib. 606. See also Chap. VII.

retained upon the Journals, the formal proceedings of the house, in case of any misrepresentation of its debates, are somewhat anomalous. The ground of complaint is, that a speech has been incorrectly reported; but the motion for the punishment of the printer assumes that the publication of the debate at all is a breach of privilege.[1] The principle, however, by which both houses are governed is now sufficiently acknowledged. So long as the debates are correctly and faithfully reported, the privilege which prohibits their publication is waived; but when they are reported *malâ fide*, the publishers of newspapers are liable to censure.[2] The late Lord Campbell endeavoured, by legislation, to protect reports of parliamentary proceedings, when published *bonâ fide*, from the law of libel;[3] and the same object was pursued by Sir Colman O'Loghlen.[4] In the meantime, Lord Chief Justice Cockburn held that the proprietor of a newspaper is not liable to an action for libel for the publication of a fair and faithful report of a debate in Parliament.[5] And by the 44 & 45 Vict. c. 60, fair and accurate newspaper reports of the proceedings of public meetings, published without malice and for the public benefit, are privileged.

Newspaper reports made *bonâ fide*.

Newspaper reports of meetings privileged.

It is declared to be a breach of privilege for a member, or any other person, to publish the evidence taken before a

Evidence before committees.

[1] See Debate on Mr. Christie's Motion, 12th Feb. 1844; 72 Hans. Deb., 3rd Series, 580. Debate, 1st May 1849; 104 Hans. Deb., 3rd Series, 1054.

[2] On the 4th May 1875, a resolution was proposed by Lord Hartington, "That this House will not entertain any complaint, in respect of the publication of the Debates or Proceedings of the House, or of any Committee thereof, except when any such Debates or Proceedings shall have been conducted with closed doors, or when such publication shall have been expressly prohibited by the House, or by any Committee, or in case of wilful misrepresentation, or other offence in relation to such publication:" but the House declined to accept it. 224 Hans. Deb., 3rd Ser. 48. For proceedings relative to the taking of notes in the side gallery, by an officer of the House, in July 1879, see 248 Hans. Deb., 3rd Ser. 47. 163. 228.

[3] See Report of Lords' Committee, on the Privilege of Reports, 1857; 149 Hans. Deb. 947; 13th April 1858.

[4] Libel bills, 1867, 1867-8, 1869.

[5] Wason *v.* Walter, 21st Dec. 1867.

select committee, until it has been reported to the house;[1] and the publisher of a newspaper has been committed for this offence[2] by the House of Commons. On the 13th April 1875, complaint was made of the publication in two newspapers of the proceedings and evidence taken before the Select Committee on Foreign Loans. The publication was declared a breach of privilege; and the printers were ordered to attend; but as it appeared in debate that the publication had not been unauthorized by the committee, they were directed to report the circumstances under which the documents had been communicated to the newspapers. A special report was accordingly made, and no further proceedings were taken.[3]

There are various other orders and rules connected with parliamentary proceedings; for example, to prevent the forgery of signatures to a petition;[4] for the protection of witnesses;[5] for securing true evidence before the house or committees;[6] for the correct publication of the votes; and for many other purposes which will appear in different parts of this work. A wilful violation of any of these orders or rules, or general misconduct in reference to the proceedings of Parliament, will be censured, or punished, at the pleasure of the house whose orders are concerned.[7]

Disobedience to particular orders.

2. Particular orders are of various kinds: as for the attendance of persons before the house or committees;[8] the production of papers or records;[9] for enforcing answers to questions put by the house, or by committees;[10] and, in short, for compelling persons to do, or not to do, any acts over which the jurisdiction of the house extends. If orders be

[1] 92 Com. J. 282.

[2] 87 Ib. 360. See also Report on Postal Communication with France, 1850 (381).

[3] 130 Com. 141. 148; 223 Hans. Deb., 3rd Series, 789.

[4] 34 Com. J. 800.

[5] 22 Ib. 146.

[6] A witness committed for prevarication, 64 Ib. 54.

[7] 4 Lords' J. 705; 37 Ib. 613; 38 Ib. 338. 649. Lords' J. 12th April 1850 (Mr. Nash); 13th August 1850 (Liverpool Corporation Waterworks).

[8] 21 Com. J. 338.

[9] Col. Fairman (Orange Lodges), 90 Com. J. 564. 575; 19th April 1849; 134 Hans. Deb., 3rd Series, 452.

[10] 88 Com. J. 218; 90 Ib. 504.

made beyond its jurisdiction, the house, as already shown, may punish the parties who refuse compliance with, or obstruct the execution of them;[1] but the enforcement of them may become a matter liable to question before the courts of law.

Libels upon the house.

3. Indignities offered to the character or proceedings of Parliament, by libellous reflections, have frequently been resented and punished as breaches of privilege. Some of the offenders have escaped with a reprimand, or admonition;[2] others have been committed to the custody of the black rod, or the serjeant-at-arms; while many have been confined in the Tower and in Newgate; and in the Lords, fine, imprisonment, and the pillory have been adjudged. Prosecutions at law have also been ordered against the parties.[3] The cases are so numerous, that only a few of the most remarkable need be given.

Lords.

The following extract from the report of a committee of the Lords, 18th May 1716, will serve to show the practice of that house:

"That where offences have been committed against the honour and dignity of the house in general, or any member thereof, the house have proceeded, both by way of fine and corporal punishment, upon such offenders; but in other cases the Attorney-General has been ordered to prosecute the offenders according to law; and the committee, on perusal of the several orders directing prosecutions by the Attorney-General, do not find that, at any time, addresses have been made to the king for such prosecutions."[4]

Prosecutions by Attorney-General.

But for other offences, not directly concerning the house, the House of Lords has repeatedly addressed the Crown to direct the Attorney-General to prosecute,[5] and the practice of the House of Commons is substantially the same. In some cases, it orders the Attorney-General to prosecute, of

[1] See 4 Lords' J. 247, where Harwood and Drinkwater were committed to the Fleet, and pilloried, for disobedience to an order for quieting the possessions of Lord Lindsey; and 6 Ib. 493.

[2] 72 Com. J. 245; 77 Ib. 432, &c.

[3] 34 Lords' J. 330. 11 Com. J. 774; 23 Ib. 546; 26 Ib. 9. 304; 34 Ib. 464; 44 Ib. 463.

[4] 20 Lords' J. 362.

[5] 16 Ib. 286; 17 Ib. 114; 21 Ib. 344; 30 Ib. 420; 36 Ib. 143; 52 Ib. 881.

its own authority, and in other cases addresses the Crown to direct such prosecutions.[1] The principle of this distinction, though not invariably observed, appears to have been, that in offences against the house, or connected with elections, the Attorney-General has been directed to prosecute;[2] but in offences of a more general character against the public law of the country, addresses have been presented to the Crown.[3]

Commitment and fines.

Very severe punishments were formerly awarded by the Lords in cases of libel, as fine, imprisonment, and pillory;[4] but in modern times commitment, with or without fine, has been the ordinary punishment.[5] On the 15th December 1756, George King was fined 50*l.*, and committed to Newgate for six months, for publishing "a spurious and forged printed paper, dispensed and publicly sold as his Majesty's speech to both houses of parliament."[6] In 1798, Messrs. Lambert and Perry were fined 50*l.* each, and committed to Newgate for three months, for a newspaper paragraph highly reflecting on the honour of the house.[7]

Precedents in the Commons.

In the Commons, William Thrower was committed to the custody of the serjeant, in 1559, for a contempt in *words* against the dignity of the house.[8] In 1580, Mr. Arthur Hall, a member, was imprisoned, *fined*,[9] and expelled, for having printed and published a libel containing "matter of infamy of sundry good particular members of the house, and of the whole state of the house in general, and also of the power and authority of the house."[10] In 1628, Henry Aleyn was committed to the custody of the serjeant for a libel on the last Parliament.[11] In 1643, the Archdeacon

[1] 1 Hatsell, 128, *n.*

[2] 96 Com. J. 394. 413; 109 Ib. 159; 112 Ib. 355.

[3] From 1711 to 1852 there were 20 addresses, two only being election cases; and 17 orders to prosecute, all being libel or election cases except one, which was for a riot.

[4] 4 Lords' J. 615; 5 Ib. 241. 244; 20 Ib. 363; 22 Ib. 353, 354.

[5] 22 Ib. 351. 367. 380.

[6] 29 Ib. 16; 15 Parl. Hist. 779.

[7] 41 Ib. 506.

[8] 1 Com. J. 60.

[9] See *infra*, p. 113.

[10] 1 Com. J. 126. D'Ewes, 291-298.

[11] 1 Com. J. 925.

of Bath was committed for abusing the last Parliament.[1] In 1701, Thomas Colepepper was committed for reflections upon the last House of Commons; and the Attorney-General was directed to prosecute him.[2] The house also resolved, shortly after the last case, "that to print or publish any books or libels reflecting upon the proceedings of the House of Commons, or any member thereof, for or relating to his service therein, is a high violation of the rights and privileges of the House of Commons.[3] In 1805, Peter Stuart was committed for printing, in his paper, libellous reflections on the character and conduct of the house.[4] In 1810, Sir F. Burdett, a member, was sent to the Tower for publishing "a libellous and scandalous paper reflecting upon the just rights and privileges of the house."[5] In 1819, Mr. Hobhouse, having acknowledged himself the author of a pamphlet, was committed to Newgate. The house had previously declared his pamphlet to be "a scandalous libel, containing matter calculated to inflame the people into acts of violence against the legislature, and against this house in particular; and that it is a high contempt of the privileges and of the constitutional authority of this house."[6] On the 26th February 1838, complaint was made of certain expressions in a speech of Mr. O'Connell, a member, at a public meeting, as containing a charge of foul perjury against members of the house, in the discharge of their judicial duties in election committees. Mr. O'Connell was heard in his place, and avowed that he had used the expressions complained of. He was declared guilty of a breach of privilege, and, by order of the house, was reprimanded in his place by the Speaker.[7]

The power of the house to commit the authors of libels was

[1] 2 Com. J. 63.
[2] 13 Ib. 735.
[3] 13 Ib. 767.
[4] 60 b. 113.
[5] 65 Ib. 252.
[6] 75 Ib. 57. Many other cases are cited in the Appendix to the Second Report on Sir F. Burdett, in 1810.
[7] 93 Com. J. 307. 312. 316; 41 Hans. Deb. 3rd Ser. 99. 207.

questioned before the Court of King's Bench, in 1811, by Sir F. Burdett, but was admitted by all the judges of that court, without a single expression of doubt.[1]

On the 21st May 1790, a general resolution was passed by the Commons:

"That it is against the law and usage of Parliament, and a high breach of the privilege of this house, to write or publish, or cause to be written or published, any scandalous and libellous reflection on the honour and justice of this house, in any of the impeachments or prosecutions in which it is engaged."[2]

Assaults, insults, or libels upon members.

Lords.

4. Interference with or reflections upon members, have often been resented as indignities to the house itself.

In the Lords, this offence has been visited with peculiar severity, of which numerous instances are to be found in the earlier volumes of their Journals.[3] Of these only a few of the most remarkable need be particularly mentioned.

On the 22nd March 1623, Thomas Morley was fined 1,000*l.*, sent to the pillory, and imprisoned in the Fleet, for a libel on the lord keeper.[4] On the 9th July 1663, Alexander Fitton was fined 500*l.*, and committed to the King's Bench, for a libel on Lord Gerard of Brandon, and ordered to find sureties for his behaviour during life; and others who had been privy to signing and publishing the libel, were imprisoned in the Fleet, and ordered to give security for their good behaviour during life.[5] On the 18th December 1667, William Carr, for dispersing scandalous and seditious printed papers against the same nobleman, was fined 1,000*l.*, sentenced to stand thrice in the pillory, to be imprisoned in the Fleet, and the papers to be burned by the hand of the hangman.[6] On the 8th March 1688, W. Downing was committed to the Gatehouse, and fined 100*l.* for printing a paper reflecting on the Lord Grey of Wark.[7]

[1] Burdett *v.* Abbot, 14 East, 1.
[2] 45 Com. J. 508.
[3] 3 Lords' J. 842. 851; 4 Ib. 131; 5 Ib. 24.
[4] 3 Ib. 276.
[5] 11 Ib. 554.
[6] 12 Ib. 174.
[7] 14 Ib. 144.

In later times, parties have been attached for libels on peers, as in 1722, for printing libels concerning Lord Strafford,[1] and Lord Kinnoul;[2] and fined and committed, as in the case of Flower, in 1799, for a libel on the Bishop of Llandaff.[3] In 1776, Richard Cooksey was attached for sending an insulting letter to the Earl of Coventry, and afterwards reprimanded, and ordered "to be continued in custody until he find security for his good behaviour."[4] In 1834, Thomas Bittleston, editor of the *Morning Post*, was committed to the custody of the usher of the black rod for a paragraph in that newspaper reflecting upon the conduct of Lord Chancellor Brougham, in the discharge of his judicial duties in the House of Lords.[5]

Commons.

In the Commons, on the 12th April 1733, it was resolved, and declared, *nem. con.*,

Assaulting, obstructing, or threatening members.

"That the assaulting, insulting, or menacing any member of this house, in his coming to or going from the house, or upon the account of his behaviour in Parliament, is an high infringement of the privilege of this house, a most outrageous and dangerous violation of the rights of Parliament, and an high crime and misdemeanor."[6]

And again, on the 1st June 1780,

"That it is a gross breach of the privilege of this house for any person to obstruct and insult the members of this house, in the coming to or going from the house, and to endeavour to compel members by force to declare themselves in favour of or against any proposition then depending, or expected to be brought before the house."[7]

And in numerous instances, as well before as after these resolutions, persons assaulting, challenging,[8] threatening, or otherwise molesting members on account of their conduct in Parliament, have been committed or otherwise punished by the house.

On the 22nd June 1781, complaint was made that Sir J.

[1] 22 Lords' J. 129.
[2] Ib. 149.
[3] 42 Ib. 181.
[4] 39 Ib. 314. 331.
[5] 66 Ib. 704. 737. 743. 764; Hans. Deb. 27th, 28th, and 30th June 1834.
[6] 22 Com. J. 115.
[7] 37 Ib. 902.
[8] 15 Ib. 405; 16 Ib. 562, &c.

Wrottesley had received a challenge for his conduct as a member of the Worcester election committee; and Swift, the person complained of, was committed to the custody of the serjeant-at-arms.[1] On the 13th April 1809, Sir Charles Hamilton complained that he had been arrested and otherwise insulted by Daniel Butler, a sheriff's officer; and Butler was committed to Newgate for his offence.[2]

On the 11th July 1824, the Speaker, having received information that a member had been assaulted in the lobby, ordered the serjeant-at-arms to take the person into custody; and doubts being entertained of his sanity, he was ordered to stand committed to the custody of the serjeant.[3]

In 1827, complaint was made of three letters which had been sent to Mr. Secretary Peel, taking notice of his speeches, and threatening to contradict them from the gallery of the house. The letters were delivered in and read, and the writer, H. C. Jennings, was ordered to attend. He acknowledged that the letters were written by him, and was declared guilty of a breach of privilege: but was suffered to escape with a reprimand from the Speaker.[4] On the 12th June 1876, complaint was made of a letter to a member, intimating that, under the rules of the Reform Club, he was liable to be removed for his political conduct: but no action was taken by the house.[5]

Libels on members.

Libels upon members have also been constantly punished: but to constitute a breach of privilege they must concern the character or conduct of members in that capacity. Aspersions upon the conduct of members as magistrates, or officers in the army or navy, or as counsel,[6] or employers of labour, or in private life, or otherwise than in relation to parliament, are within the cognizance of the courts, and are not fit subjects for complaints to the House of Commons. In 1680,

[1] 38 Com. J. 535. 537.
[2] 64 Ib. 210. 213.
[3] 79 Ib. 483.
[4] 82 Ib. 395. 399.
[5] 131 Ib. 252; 229 Hans. Deb. 3rd Ser. 1670.
[6] Dr. Kenealy's case, 4th March 1875; 222 Hans. Deb. 3rd Ser. 1185.

A. Yarrington and R. Groome were committed for a libel against a member.[1] In 1689, Christopher Smelt was committed for spreading a false and scandalous report of Peter Rich, a member.[2] In 1696, John Rye was committed for having caused a libel, reflecting on a member, to be printed and delivered at the door.[3] In 1704, James Mellot was committed for false and scandalous reflections upon two members.[4] In 1733, William Noble was committed for asserting that a member received a pension for his voting in Parliament.[5] In 1774, H. S. Woodfall was committed for publishing a letter reflecting on the character of the Speaker.[6] In 1821, the author of a paragraph in the *John Bull* newspaper, containing a false and scandalous libel on a member, was committed to Newgate.[7]

On the 1st March 1824, Mr. Abercromby made a complaint to the house that the Lord Chancellor in his court had used offensive expressions with reference to what had been said by himself in debate;[8] but on division the matter was not allowed to proceed any further.

In 1832, Messrs. Kidson & Wright, solicitors, were admonished for having addressed to the committee on the Sunderland Dock Bill, a letter reflecting on the conduct of members of the committee, copies of which were circulated in printed handbills.[9] On the 1st June 1874, Mr. France was admonished at the bar, by the Speaker, for addressing a letter to the chairman of the committee on explosive substances, imputing unfair conduct to him and other members of the committee.[10]

Other cases, too numerous to mention, have occurred, in

[1] 9 Com. J. 654. 656.
[2] 10 Ib. 244.
[3] 11 Ib. 656.
[4] 14 Ib. 565.
[5] 23 Ib. 245.
[6] 34 Ib. 456.
[7] 76 Ib. 335.
[8] 10 Hans. Deb. N. S. 571.
[9] 87 Com. J. 278. 294. For similar cases of libels upon committees, see 72 Com. J. 232 (Police Committee, 1816); 93 Com. J. 436 (Shaftesbury Election); 113 Com. J. 189, &c. (Carlisle and Hawick Railways); 150 Hans. Deb. 1022. 1063. 1198, &c.
[10] 129 Com. J. 181. 189; 219 Hans. Deb. 3rd Ser. 755.

some of which the parties have been committed or reprimanded; and in others the house has considered that the remarks did not justify any proceedings against the authors or publishers.[1] In 1844, a member having made charges at a public meeting against two members of the house, was ordered to attend in his place; and after he had been heard, the house resolved that his imputations were wholly unfounded and calumnious, and did not affect the honour and character of the members concerned.[2]

On some occasions the house has also directed prosecutions against persons who have published libels reflecting upon members, in the same manner as if the publications had affected the house collectively.[3]

Misrepresentation.

Wilful misrepresentation of the proceedings of members is an offence of the same character as a libel.

On the 22nd April 1699, it was resolved,

"That the publishing the names of the members of this house and reflecting upon them, and misrepresenting their proceedings in Parliament, is a breach of the privilege of this house, and destructive of the freedom of Parliament."[4]

Offering bribes to members.

On the 2nd May 1695, it was resolved,

"That the offer of any money, or other advantage, to any member of Parliament, for the promoting of any matter whatsoever, depending or to be transacted in Parliament, is a high crime and misdemeanor, and tends to the subversion of the English constitution."[5]

And in the spirit of this resolution, the offer of a bribe, in order to influence a member in any of the proceedings of the house, or of a committee, has been treated as a breach of privilege, being an insult not only to the member himself, but to the house.[6]

[1] See the head of PRIVILEGES in the General Journ. Ind. 1547–1713, and COMPLAINTS in the other Journal Indexes; and recent cases of Mr. Aston in 1872; Mr. Plimsoll and *Pall Mall Gazette* in 1873; Mr. O'Donnell and the *Globe* in 1878; and Mr. Plimsoll's placards reflecting upon Sir Charles Russell, 17th Feb. 1880; 135 Com. J. 46. 54; 250 Hans. Deb. 3rd Ser. 797. 1108.

[2] Mr. Ferrand's case, 24th and 26th April 1844, 99 Com. J. 235. 239.

[3] 13 Ib. 230; 14 Ib. 37.

[4] 12 Ib. 661.

[5] 11 Ib. 331.

[6] 11 Ib. 274, 275; 14 Ib. 474; 17 Ib. 493, 494; 19 Ib. 542.

On the 18th March 1694-5, Mr. Bird was reprimanded for offering a bribe to Mr. Musgrave, a member, and gentleman of the long robe, in the form of a guinea fee, for preparing a petition to the house.[1]

Offer to influence a committee.

An offer to control the decision of the committee on a private bill, for a corrupt consideration, has also been treated as a breach of privilege, and punished accordingly.[2]

Acceptance of bribes by members.

So also the acceptance of a bribe by a member has ever, by the law of Parliament, been a grave offence, which has been visited with the severest punishments. In 1677, Mr. John Ashburnham was expelled for receiving 500*l.* from the French merchants for business done in the house.[3] In 1694, Sir John Trevor was declared guilty of a high crime and misdemeanor, in having, while Speaker of the house, received a gratuity of a thousand guineas from the City of London, after passing the Orphans Bill, and was expelled.[4] In 1695, Mr. Guy, secretary to the Treasury, was committed to the Tower for taking a bribe of two hundred guineas;[5] and in the same year Mr. Hungerford was expelled, as guilty of a high crime and misdemeanor, in receiving twenty guineas for his pains and service as chairman of the committee on the Orphans Bill.[6]

Nor has the law of Parliament been confined to the repression of direct pecuniary corruption. To guard against indirect influence, it has further restrained the acceptance of fees by its members, for professional services connected with proceedings in Parliament.[7] And on the 22nd June 1858, the House of Commons resolved,

"That it is contrary to the usage, and derogatory to the dignity of this house, that any of its members should bring forward, promote, or advocate in this house, any proceeding or measure in which he may

[1] 5 Parl. Hist. 910.

[2] Tower High Level Bridge Bill, 1879: cases of Grissell and Ward, 134 Com. J. 322. 326. 348. 366, &c.

[3] 9 Ib. 24.

[4] 11 Ib. 274; 5 Parl. Hist. 900–910.

[5] 5 Parl. Hist. 886.

[6] 11 Com. J. 283; 5 Parl. Hist. 911.

[7] See *infra*, Chap. XII., on Divisions.

have acted or been concerned, for or in consideration of any pecuniary fee or reward."[1]

Interference with officers.

Assaults, or interference with officers of the house, while in the execution of their duty, have also been punished as breaches of privilege.[2]

Tampering with witnesses.

To tamper with a witness in regard to the evidence to be given by him before the house, or any committee of the house, is a breach of privilege.[3] On the 9th February 1809, during the inquiry into the conduct of the Duke of York, Mrs. Clarke read a letter she had received from the Rev. W. Williams, and stated that he had proposed that she should leave the country. The inquiry being in committee of the whole house, progress was immediately reported, the doors of the house directed to be secured, and the Rev. W. Williams ordered to be taken into custody. On being afterwards examined in custody, he was closely pressed and obliged to answer all the questions relating to his interviews with Mrs. Clarke, and his objects in giving her advice as to her evidence. He appealed to the chairman, whether he was bound to answer questions to prove himself guilty of a breach of privilege. No actual decision was given upon this appeal: but throughout his examination, questions of that character had been addressed to him.[4]

On the 19th June 1857, a petition was presented, complaining that Peter Johnson had offered the sum of 50*l.* to Abraham Rothwell, a witness, who had been served with the Speaker's warrant to attend before the Rochdale election committee, to induce him to go to New Orleans for the purpose of avoiding giving evidence before the committee. John Newall, the petitioner, and Abraham Rothwell were ordered to attend the house forthwith; and were examined.

[1] See Hans. Deb. 22nd June 1858. On the 13th April, a similar motion had been made, in other terms, and withdrawn. See also proceedings and report on the petition of Edward Coffey, 1858; 148 Hans. Deb. 3rd Ser. 1855, &c.

[2] 19 Com. J. 366. 370; 20 Ib. 185.

[3] Sessional Order.

[4] 12 Hans. Deb. 461.

Peter Johnson and John Lord were also ordered to attend forthwith; the former absconded, and was ordered into custody, the latter was examined; and a select committee was appointed to continue the inquiry, which resulted, however, in no definite conclusion. Out of this case there arose, incidentally, a question how far a person accused of a breach of privilege is bound to answer questions tending to criminate himself, on which considerable differences of opinion were entertained.[1]

Persons committed by the Speaker.

When the Speaker is accompanied by the mace, he has power to order persons into custody for disrespect, or other breaches of privilege committed in his presence, without any previous order of the house. Mr. Speaker Onslow ordered a man into custody who pressed upon him in Westminster Hall;[2] and a case is mentioned by D'Ewes in which a member seized upon an unruly page and brought him to the Speaker, by whom he was committed prisoner to the serjeant.[3] In 1675, Sir Edward Seymour, the Speaker, seized Mr. Serjeant Pemberton, and delivered him into the custody of a messenger: but in that case Pemberton had already been in custody, and had escaped from the serjeant-at-arms.[4]

Inquiry into alleged breaches of privilege.

In all these classes of offences, both houses will commit, or otherwise punish, in the manner described: but not without due inquiry into the alleged offence.

Lords.

By a Standing Order of the Lords of 11th January 1699, it is ordered,—

"That in case of complaint by any lord of this house of a breach of privilege, wherein any person shall be taken into custody for the future; if the house, upon examination of the matter complained of, shall judge the same to be no breach of privilege, the lord who made the complaint shall pay the fees and expenses of the person so taken into custody; and that no person shall be taken into custody upon

[1] 146 Hans. Deb. 3rd Ser. 97. In 1857, the Congress of the United States passed a bill making it a misdemeanor to refuse to answer questions put in either House of Legislature.

[2] 2 Hatsell, 241, *n.*

[3] D'Ewes, 629.

[4] 9 Com. J. 351. 353. See also 1 Ib. 157. 210. 972.

complaint of a breach of privilege, but upon oath made at the bar of this house."[1]

This order was explained, on the 3rd June 1720, "to be understood only of breaches of privilege committed in Great Britain: but that oath made by affidavit, in writing, of a breach of privilege committed in Ireland, may be sufficient ground to take into custody the person thereby proved to have been guilty of such breach of privilege, though no oath be made thereof at the bar of this house."[2]

Before the year 1845, it had been customary for the House of Lords, when inquiring into any alleged breach of privilege, to conduct such inquiries with closed doors:[3] but, in later cases, strangers have not been ordered to withdraw.

Commons.

In the Commons it was resolved, 31st January 1694,

"That no person shall be taken into custody, upon complaint of any breach of privilege of this house, before the matter be first examined:" but it was at the same time resolved and declared, "That the said order is not to extend to any breach of privilege upon the person of any member of this house."[4]

Again, on the 3rd January 1701, it was resolved,

Committee of privileges.

"That no person be taken into custody of the serjeant-at-arms, upon any complaint of a breach of privilege, until the matter of such complaint shall have been examined by the committee of privileges, and reported to the house, and that the same be a Standing Order of the house."[5]

It is no longer the practice to refer such matters to the Committee of Privileges, although that committee is still nominally appointed. Its appointment, at the commencement of each session, was discontinued in 1833, together with that of the ancient grand committees: but has since been revived, *pro formâ*. It has not been customary, however, to nominate the committee: but in 1847, a complaint having been made of the interference of a peer in the West Gloucester election, the order for the appointment of the Committee of Privileges was read, and the committee was

[1] Lords' S. O. No. 70.

[2] Ib. No. 71.

[3] Lord Hawarden's case, 31 Jan. 1828; 59 Hans. Deb. 69. The umbrella case, 26 March 1827; 58 Hans. Deb. 35.

[4] 11 Com. J. 219.

[5] 13 Ib. 648.

nominated, consisting of nine members, and of all knights of the shire, gentlemen of the long robe, and merchants in the house.[1] In 1857, a committee, constituted in a similar manner, was appointed to consider the oaths of members, and consisted of twenty-five members, nominated by the house, and all gentlemen of the long robe.[2]

Proceedings upon complaints.

It is the present practice, when a complaint is made, to order the person complained of to attend the house;[3] and on his appearance at the bar, he is examined and dealt with, according as the explanations of his conduct are satisfactory or otherwise; or as the contrition expressed by him for his offence, conciliates the displeasure of the house. If there be any special circumstances arising out of a complaint of a breach of privilege, it is usual to appoint a select committee to inquire into them, and the house suspends its judgment until their report has been presented.[4]

Complaints of newspapers.

When a complaint is made of a newspaper, the newspaper itself must be produced, in order that the paragraphs complained of may be read.[5] And a member complaining of the report of his speech in a newspaper, has been stopped by the Speaker, where it appeared that he had no copy of the newspaper on which to found his complaint.[6] On the 23rd February 1880, a complaint having been made of articles in several newspapers, Mr. Speaker said that if he called upon the clerk to read all those articles he should be trifling with the house, and he should therefore take leave to depart from the ordinary

[1] 103 Com. J. 139.

[2] 112 Ib. 369. This term is understood to comprise all members who, at the time, would be qualified to practise as counsel, according to the rules and usage of the profession, whether actually practising or not.

[3] 112 Ib. 231; 113 Ib. 189, &c.

[4] Rochdale Election Case, 19th June 1857. 112 Com. J. 232. 146 Hans. Deb. 3rd Ser. 97, &c. Tower High Level Bridge Bill, 1879, cases of Grissell and Ward, 134 Com. J. 326.

[5] 113 Com. J. 189. 150 Hans. Deb. 3rd Ser. 1022. 1063.

[6] On the 4th April 1878, Mr. Parnell, having complained of three newspapers, brought up certain extracts pasted upon paper, and upon the clerk calling Mr. Speaker's attention to the irregularity, further proceedings were at once arrested. 239 Hans. Deb. 532—536.

course.[1] The member who makes the complaint must also be prepared with the names of the printer or publisher;[2] and it is irregular to make such a complaint, unless the member intends to follow it up with a motion.[3] But such a motion has been confined to declaring the article, or letter, to be a breach of privilege, without further action.[4]

Frivolous complaints.

In order to discourage frivolous complaints, a Standing Order, similar to that of the Lords, was agreed to, on the 11th February 1768:

"That in case of any complaint of a breach of privilege hereafter to be made by any member of this house, if the house shall adjudge that there is no ground for such complaint, the house will order satisfaction to the person complained of, for his costs and expenses incurred by reason of such complaint."[5]

This order may be regarded as obsolete; nor is its operation needed, as the house will refuse to entertain any complaint which appears to be frivolous.

In some cases proceedings against a member have been commenced by a question addressed to him upon the subject;[6] and where an apology or retractation is expected, a more formal proceeding may thus be averted. But generally the more regular and convenient course is to make a complaint, and to found a motion upon it. The matter may then be regularly discussed by the house. On the 4th March 1875, Dr. Kenealy having addressed a question to Mr. Evelyn Ashley, and received an answer, proceeded to give notice to bring the matter forward on the following day. But Mr. Lowe rose to discuss it at once, in moving an adjournment. Upon that question a debate ensued, and, on the withdrawal of the motion, the house resolved to proceed to the orders of the day, and thus arrested further proceedings.[7]

[1] 135 Com. J. 57. 250 Hans. Deb. 3rd Ser. 1221.

[2] Debate 1st May 1849 (Mr. J. O'Connell).

[3] 59 Hans. Deb. 3rd Ser. 507, 17th March 1859 (Mr. Stuart Wortley).

[4] 136 Com. J. 272.

[5] 31 Ib. 602.

[6] Mr. O'Connell's case, 1848. Mr. Sullivan and Mr. Lopes, 12th February 1875; 222 Hans. Deb. 3rd Ser. 269. Mr. Yorke and Mr. Herbert Gladstone, 16th March 1883.

[7] 222 Hans. Deb. 3rd Ser. 1185.

REESE LIBRARY OF THE UNIVERSITY OF CALIFORNIA.

On the 17th February 1880, a complaint was made of the publication of printed placards throughout the city of Westminster, reflecting upon the conduct of Sir Charles Russell, member for that city, and signed by Mr. Plimsoll, a member. On the 20th February Mr. Plimsoll, having withdrawn the expressions complained of, and apologised for having used them, the house condemned the conduct of the hon. member as a breach of privilege, but having regard to his withdrawal of the expressions complained of, resolved that no further action was necessary.[1]

Offences in former session.

Either house will punish in one session offences that have been committed in another.[2] On the 4th and 14th April 1707, it was resolved by the Commons, *nem. con.*,

"That when any person ordered to be taken into the custody of the serjeant-at-arms, shall either abscond from justice, or having been in custody, shall refuse to pay the just fees, that in either of those cases the order for commitment shall be renewed at the beginning of the next session of Parliament, and that this be declared to be a Standing Order of the house."[3]

In 1751, Mr. Murray, who had been imprisoned in Newgate until the close of the session for a libel, was, on the next meeting of Parliament, again ordered to be committed: but he had absconded, in the meantime, to escape a second imprisonment.[4] In 1879, Charles Edward Grissell, having neglected to attend the house to answer for a breach of privilege, was ordered into the custody of the serjeant-at-arms; but evaded the execution of the Speaker's warrant, by going abroad, until two days before the close of the session, when he was committed to Newgate.[5] On the 2nd March 1880, a petition submitting himself to the house was presented, when he was ordered to be sent for in the custody of the serjeant-at-arms. Being taken into custody on the same day, he was ordered to stand committed to the custody of the serjeant, and to be brought in custody to the bar on the following day;

[1] 135 Com. J. 46. 54.

[2] 21 Lords' J. 189. 17 Com. J. 293; 20 Ib. 549; 22 Ib. 210.

[3] 15 Ib. 376. 386.

[4] 26 Ib. 303.

[5] 134 Ib. 366. 432. 435. And see *supra*, p. 103.

when, having failed to satisfy the house by his apologies, it was ordered that "having evaded punishment for his offences, until the close of the last session, he be committed to the gaol of Newgate."[1]

It also appears, that a breach of privilege committed against one Parliament may be punished by another; and libels against former Parliaments have often been punished.[2] In the debate on the privilege of Sir R. Howard, in 1625, Mr. Selden said, "It is clear that breach of privilege in one Parliament may be punished in another succeeding."[3]

Differences in the punishment inflicted by the Lords and by the Commons.

In all the cases that have been noticed as breaches of privilege, both houses have agreed in their adjudication: but in several important particulars, there is a difference in their modes of punishment. The Lords claim to be a court of record, and, as such, not only to imprison, but to impose fines. They also imprison for a fixed time, and order security to be given for good conduct; and their customary form of commitment is by attachment. The Commons, on the other hand, commit for no specified period, and of late years, have not imposed fines.

There can be no question that the House of Lords, in its judicial capacity, is a court of record: but, according to Lord Kenyon, "when exercising a legislative capacity, it is not a court of record."[5] However this may be, instances too numerous to mention have occurred, in which the Lords have sentenced parties to pay fines.[6] Many have already been noticed in the present chapter, as well as cases in which they have ordered security to be given for good conduct, even during the whole life of the parties.[7] The following Standing Order, now obsolete, was made by the Lords, on the 3rd April 1624:

Fines imposed by the Lords.

"Whereas this high court of the Upper House of Parliament do often find cause in their judicature to impose fines, amongst other

[1] 135 Com. J. 70. 73. 77.

[2] 1 Ib. 925; 2 Ib. 63; 13 Ib. 735.

[3] 1 Hatsell, 184.

[4] Lords' Minutes, 22nd July and 13th Aug. 1850.

[5] Flower's case, 1779. 8 Durnf. & East, 314.

[6] 3 Lords' J. 276; 11 Ib. 554; 12 Ib. 174; 14 Ib. 144; 30 Ib. 493 (Report of Precedents); 42 Ib. 181; 43 Ib. 60. 105.

[7] 11 Ib. 551; 39 Ib. 331.

punishments, upon offenders, for the good example of justice, and to deter others from like offences; it is ordered and declared, that at the least once before the end of every session, the committees for the orders of the house and privileges of the lords of Parliament, do acquaint the lords with all the fines that have been laid that session, that thereupon their lordships may use that power which they justly have, to take off or mitigate such fines, either wholly or in part, according to the measure of penitence or ability in the offenders, or suffer all to stand, as in equity their lordships shall think fit."[1]

Commitment for a specified term.

The Lords have power to commit offenders to prison for a specified term, even beyond the duration of the session;[2] and thus on the 13th August 1850, being within two days of the prorogation, certain prisoners were committed for a fortnight.[3] If no time were mentioned, and the commitment were general, it has been said that the prisoners could not be discharged on habeas corpus even after a prorogation:[4] but in the case of Lord Shaftesbury, a doubt was expressed by one of the judges whether the imprisonment, which was for an uncertain time, would be concluded by the session; and another said, that if the session had been determined, the prisoner ought to have been discharged.[5] The latter opinion derives confirmation from the following precedent. On the 14th January 1744, the serjeant-at-arms acquainted the house that he had kept a prisoner in his custody, "until he was *discharged of course by the prorogation* of Parliament, without his having made his submission;" whereupon the offender was ordered to be re-attached.[6]

Whether House of Commons be a court of record.

Whether the House of Commons be, in law, a court of record, it would be difficult to determine; for this claim, once firmly maintained, has latterly been virtually abandoned, although never distinctly renounced. In Fitzherbert's case, in 1592, the house resolved, "That this house being a court

[1] Lords' Journ. 3rd April 1624.
[2] 43 Lords' J. 105.
[3] Lords' Minutes, 13th August 1850.
[4] Lord Denman's Judgment in Stockdale *v.* Hansard, 1839 (283), p. 147.
[5] Howell, St. Tr. 1296. 1 Mod. Rep. 144.
[6] 26 Lords' J. 420.

of record, would take no notice of any matter of fact at all in the said case, but only of matter of record;" and the record of Fitzherbert's execution was accordingly sent to the house by the lord keeper.[1] In the debate on Floyde's case, in 1621, Sir Edward Coke said, "No question but this is a house of record, and that it hath power of judicature in some cases;" and exclaimed, "I wish his tongue may cleave to his mouth that saith that this house is no court of record."[2] And in 1604, the apology of the Commons contains these words: "We avouch also that our house is a court of record, and ever so esteemed."[3] On the other hand, in Jones *v.* Randall,[4] Lord Mansfield said the House of Commons was not a court of record.

It may be argued that if the Commons, as a branch of the High Court of Parliament, be not a court of record in adjudging breaches of privilege, the judicature of the Lords is not sufficient alone to constitute that house a court of record, in their legislative capacity; for though they have various kinds of judicature, the Commons also have parallel kinds of judicature. The Lords have a judicature for their privileges, and for the determination of all claims of peerage; the Commons have, in like manner, a judicature for their privileges, and in the election of members. It is true that the Lords have other judicial functions which the Commons do not possess; but so far as each house is acting within its own peculiar jurisdiction, the one would appear to be a court of record as well as the other; and when does the legislative character cease, and the judicial character begin in either house? In their deliberations they are both legislative, but when their privileges are infringed, their judicature is called into action. If this view of the question be allowed, both houses, in matters of privilege, are equally courts of record; and the Lords have no further claim to that character than

[1] D'Ewes, 502.
[2] 1 Com. J. 604.
[3] 1 Hatsell, 233.
[4] 1 Cowp. 17.

the Commons, except when they are sitting as a court of appeal, in trials of peers, in hearing claims of peerage, or in cases of impeachment.[1]

Fines imposed by the Commons.

Acting as a court of record, the Commons formerly imposed fines and imprisoned offenders for a time certain. In 1575, Smalley, a member's servant, who had fraudulently procured himself to be arrested, in order to be discharged of a debt and execution, was committed to the Tower, for a month, and until he should pay to W. Hewett the sum of 100*l.*[2] Again, in 1580, Mr. Arthur Hall, a member, who had offended the house by a libel, was ordered to be committed to the Tower, and to remain in the said prison for *six months, and so much longer as until himself should willingly make retractation of the said book, to the satisfaction of the house;* and it was resolved that a fine should be assessed by this house, to the Queen's Majesty's use, of 500 marks, and that he should be expelled.[3] There are also several other cases in the earlier Journals, in which offenders were committed by the house for a time certain;[4] and in which prisoners have been admitted to bail.[5] In 1586, Bland, a currier, was fined 20*l.* for having used contumacious expressions against the House of Commons.[6]

Floyde's case.

In Floyde's case, in 1621, the Commons clearly exceeded their jurisdiction. That person had spoken offensive words concerning the daughter of James I., and her husband, the elector palatine. In this he may have been guilty of a libel, but certainly not of any breach of parliamentary privilege. Yet the Commons took cognizance of the offence, and sentenced Floyde to pay a fine of 1,000*l.*, to stand twice in the pillory, and to ride backwards on a horse, with the horse's tail in his hand.[7] Upon this judgment being given, first the King and then the Lords interfered, not on account of

[1] See also Chapters VII. and XV.
[2] 1 Com. J. 112, 113.
[3] 1 Ib. 125, 126.
[4] 1 Ib. 269. 333. 639. 655; 7 Ib. 531. 591; 9 Ib. 543. 687. 737.
[5] 1 Ib. 621; 2 Ib. 806; 9 Ib. 96. 216; 10 Ib. 84; 12 Ib. 255, 256; 13 Ib. 318, &c.
[6] D'Ewes, J. 366.
[7] 1 Com. J. 609. 1 Hans. Parl. Hist. 1250.

the severity of the punishment, nor because it was thought to exceed the power of the house; but because the offence was altogether beyond the jurisdiction of the Commons. The Commons perceived their error, and left the offender to be dealt with by the Lords; but at the same time they guarded their own rights by an ambiguous protestation that their proceedings against Floyde "should not be drawn or used as a precedent to the enlarging or diminishing the lawful rights and privileges of either house, but that the rights and privileges of both houses should remain in the selfsame state and plight as before."[1] But if the Commons exceeded their jurisdiction in this case, the Lords equally disregarded the limits of their own, and proceeded to still more disgraceful severities. Floyde was charged by the Attorney-General before the Lords, and received sentence that he should be incapable of bearing arms as a gentleman; that he should be ever held an infamous person, and his testimony not be taken in any court or cause; that he should ride twice to the pillory with his face to the horse's tail, holding the tail in his hand; that he should be branded with the letter K on his forehead, be whipped at the cart's tail, be fined 5,000*l.* to the King, and be imprisoned in Newgate for life.[2]

The last case of a fine by the Commons occurred in 1666, when a fine of 1,000*l.* was imposed upon Thomas White, who had absconded after he had been ordered into the custody of the serjeant-at-arms.[3]

Present modes of punishment.

The modern practice of the Commons is to commit persons to the custody of the serjeant-at-arms, to Newgate, or to the Tower, during the pleasure of the house; and to keep offenders there until they present petitions praying for their release, and expressing contrition for their offences;[4] or until, upon motion made in the house, it is resolved that they shall

[1] 1 Com. J. 619.

[2] 3 Lords' J. 134. See also "Proceedings and Debates of the Commons," 1620, 1621 (Oxford), and 1 Hans. Parl. Hist. 1259.

[3] 8 Com. J. 690.

[4] It has been customary to order such petitions to be printed and considered on a future day. 97 Com. J. 180. 209; 106 Ib. 151; 113 Ib. 196; 134 Ib. 381; 150 Hans. Deb. 3rd Ser. 1198.

be discharged.[1] It is then usual for the parties to be brought to the bar, by the serjeant with his mace,[2] and after a reprimand from the Speaker, to be discharged on payment of their fees.[3] But occasionally their attendance at the bar,[4] and the reprimand,[5] have been dispensed with.

Reprimand and admonition.

It is not customary to order a person to be reprimanded unless he be in custody, though there are some examples of a different practice.[6] When the offence has not been so grave as to cause the commitment of the offender, he is generally directed to be "admonished" only.[7] What is said by Mr. Speaker, in reprimanding or admonishing persons at the bar, is always ordered to be entered in the Journals. Where the offence has been slight, or the apology is accepted as satisfactory, even an admonition has been dispensed with; and the house has resolved to proceed no further in the matter (such resolution being communicated to the person concerned, by the Speaker);[8] or that the person be excused or discharged from further attendance.[9]

Payment of fees.

It cannot fail to be remarked that this condition of the payment of fees still partakes of the character of a fine. The payment of the money forms part of the punishment, and is compulsory; nor could any limit be imposed upon the amount fixed by order of the house. Payment has been occasionally remitted under special circumstances,[10] as, for example, on

[1] 95 Com. J. 291. 337; 97 Ib. 224.

[2] On the 9th May 1604, it was "delivered for a rule, that no delinquent is to be brought in, but by the serjeant with his mace." 1 Com. J. 204.

[3] 82 Ib. 399; 87 Ib. 365; 97 Ib. 240; 106 Ib. 289.

[4] 75 Ib. 467; 103 Ib. 263; 113 Ib. 203; 150 Hans. Deb. 3rd Ser. 1313. 1404. John Sandilands Ward, 29th July 1879; 134 Com. J. 385. Mr. Bradlaugh, 24th June 1880; 135 Ib. 241.

[5] 86 Com. J. 333; 90 Ib. 532; 95 Ib. 96; 101 Ib. 768.

[6] 5 Parl. Hist. 910; 82 Com. J. 399; 93 Ib. 316.

[7] 87 Com. J. 294; 88 Ib. 218; 97 Ib. 143.

[8] Case of Mr. Hope, 17th July 1822; 77 Com. J. 432; 7 Hans. Deb. 2nd Ser. 1668.

[9] Case of Mr. Menzies, 17th July 1822. Ibid. Case of Mr. Reed, 27th February 1863; 118 Com. J. 106.

[10] 58 Com. J. 221; 74 Ib. 192; 80 Ib. 470; 83 Ib. 199; 90 Ib. 532; 106 Ib. 147; 108 Ib. 595, &c.

account of the poverty of the parties,[1] or because the prisoner was labouring under mental delusion;[2] and, in one case, as arrangements had been made for his immediate removal to a lunatic asylum.[3]

Imprisonment by the Commons concluded by prorogation.

No period of imprisonment is named by the Commons, and the prisoners committed by them, if not sooner discharged by the house, are immediately released from their confinement on a prorogation,[4] whether they have paid the fees or not. If they were held longer in custody, they would be discharged by the courts, upon a writ of habeas corpus. Lord Denman, in his judgment in the case of Stockdale *v.* Hansard, said,

"However flagrant the contempt, the House of Commons can only commit till the close of the existing session. Their privilege to commit is not better known than this limitation of it. Though the party should deserve the severest penalties, yet, his offence being committed the day before the prorogation, if the house ordered his imprisonment but for a week, every court in Westminster Hall, and every judge of all the courts, would be bound to discharge him by habeas corpus."[5]

Prisoners kneeling at the bar.

It was formerly the practice to make prisoners receive the judgment of the house, kneeling at the bar. In both houses, however, this practice has long since been discontinued; although the entries in the Lords' Journals still assume that the prisoners are "on their knees" at the bar.[6] On the 16th March 1772, it was resolved by the Commons, *nem. con.*,

"That when any person shall from henceforth be brought to the bar of this house to receive any judgment of this house, or to be discharged from the custody of the serjeant-at-arms attending this house, or from any imprisonment inflicted by order of the house, such person shall receive such judgment, or the order of the house for his discharge, standing at the bar, unless it shall be otherwise directed in the order of the house made for that purpose;" and ordered to be made a Standing Order.[7]

[1] 74 Com. J. 192.

[2] 85 Ib. 465.

[3] 107 Ib. 301.

[4] But this law never extended to an adjournment, even when it was in the nature of a prorogation. See 10 Com. J. 537.

[5] Judgment in Stockdale *v.* Hansard, 1839 (283), p. 142.

[6] 77 Lords' J. 737, &c.

[7] 33 Com. J. 594.

The discontinuance of this practice arose from the refusal of Mr. Murray to kneel, when brought up to the bar of the House of Commons, on the 4th of February 1750. For this refusal he was declared "guilty of a high and most dangerous contempt of the authority and privilege of this house;" was committed close prisoner to Newgate, and not allowed the use of pen, ink, and paper.[1] It appears that there had previously been only one other instance of such a refusal to kneel.[2]

[1] 14 Hans. Parl. Hist. 894. 1 Walpole's Memoirs of George II., 15.

[2] Report of Precedents; 26 Com. J. 48. There had, however, been similar cases before the Lords; 3 Parl. Hist. 844. 880.

CHAPTER IV.

PRIVILEGE OF FREEDOM OF SPEECH CONFIRMED BY THE ANCIENT LAW OF PARLIAMENT AND BY STATUTE: ITS NATURE AND LIMITS.

Necessity of freedom of speech.

FREEDOM of speech is a privilege essential to every free council or legislature. It is so necessary for the making of laws, that if it had never been expressly confirmed, it must still have been acknowledged as inseparable from Parliament, and inherent in its constitution. Its principle was well stated by the Commons, at a conference on the 11th of Decembe 1667: "No man can doubt," they said, "but whatever is once enacted is lawful: but nothing can come into an Act o Parliament, but it must be first affirmed or propounded by somebody: so that if the Act can wrong nobody, no mor can the first propounding. The members must be as free a the houses; an Act of Parliament cannot disturb the state therefore the debate that tends to it cannot; for it must b propounded and debated before it can be enacted."[1]

Confirmed by law of Parliament.

But this important privilege has not been left to depen upon abstract principles, nor even upon the ancient law an custom of Parliament, but has been recognized and con firmed as part of the law of the land. According to Elsyng the "Commons did oftentimes, under Edward III., discus and debate amongst themselves many things concerning th King's prerogative, and agreed upon petitions for laws to b made directly against his prerogative, as may appear b divers of the said petitions; yet they were never interrupte in their consultations, nor received check for the same, as ma appear also by the answers to the said petitions."[2]

[1] 12 Lords' J. 166.

[2] Elsynge, 177.

In the 20th of Richard II., however, a case occurred in which this ancient privilege was first violated, and afterwards signally confirmed. Haxey, a member of the Commons, having displeased the King, by offering a bill for reducing the excessive charge of the royal household, was condemned in Parliament as a traitor. But on the accession of Henry IV., Haxey exhibited a petition to the King in Parliament to reverse that judgment, as being "against the law and custom which had been before in Parliament;" and the judgment was reversed and *annulled* accordingly by the King, with the advice and assent of all the lords spiritual and temporal.[1] This was unquestionably an acknowledgment of the privilege, by the highest judicial authority—the King and the House of Lords; and in the same year the Commons took up the case of Haxey, and in a petition to the King affirmed "that he had been condemned against the law and course of Parliament, and in annihilation of the customs of the Commons;" and prayed that the judgment might be reversed, "as well for the furtherance of justice as for the saving of the liberties of the Commons."[2] To this the King also assented, with the advice and assent of the lords spiritual and temporal; and thus the whole legislature agreed that the judgment against Haxey, in derogation of the privileges of Parliament, "should be annulled and held to be of no force or effect."[3] Haxey's case.

In the 33rd Henry VI., Thomas Young, a member, presented a petition, complaining that he had been imprisoned "for matters by him showed in the house." The Commons transmitted his petition to the Lords, and the King "willed that the lords of his council do and provide for the said suppliant, as in their discretion shall be thought convenient and reasonable."[4] Young's case.

Again, in the 4th Henry VIII. (1512), Mr. Strode, a Strode's case.

[1] 1 Hen. IV.; 3 Rot. Parl. 430.

[2] "Si bien en accomplissement de droit, come pur salvation des libertés de lez ditz communes."

[3] 3 Rot. Parl. 434.

[4] 5 Ib. 337.

member of the House of Commons, was prosecuted in the Stannary Court, for having proposed certain bills to regulate the tinners in Cornwall, and was fined and imprisoned in consequence.[1] Upon which an Act was passed,[2] which, after stating that Strode had agreed with others of the Commons in putting forth bills, "the which here, in this High Court of Parliament, should and ought to be communed and treated of," declared the proceedings of the Stannary Court to be void, and further enacted,

> "That all suits, condemnations, executions, fines, amerciaments, punishments, &c. put or had, or hereafter to be put or had, upon the said Richard (Strode), and to every other of the person or persons that now be of the present Parliament, or *that of any Parliament thereafter shall be*, for any bill, speaking, reasoning, or declaring of any matter or matters concerning the Parliament, to be communed and treated of, be utterly void and of none effect."

As the proceedings which had already taken place against Strode were declared to be void, it is evident that freedom of speech was then admitted to be a privilege of Parliament, and was not at that time first enacted. The words of the statute also leave no doubt that it was intended to have a general operation in future, and to protect all members, of either house, from any question on account of their speeches or votes in Parliament.

Petition of the Commons.

Thirty years afterwards the petition of the Commons to the King, at the commencement of the Parliament, appears for the first time to have included this privilege amongst those prayed for of the King. The first occasion on which such a petition is recorded, was in the 33rd Henry VIII. (1541), when it was made by Thomas Moyle, Speaker.[3]

But although the petitions for freedom of speech had not been previously made in that form, there is a remarkable petition of the Commons, and answer of the King, in the 2nd Henry IV., relating to this privilege. The Commons prayed the King not to take notice of any reports that might

[1] 4 Parl. Hist. 85. 1 Hatsell, 86. [2] 4 Hen. VIII. c. 8.
[3] Elsynge, 176.

be made to him of their proceedings; to which the King replied, that it was his wish that the Commons should deliberate and treat of all matters amongst themselves, in order to bring them to the best conclusion, according to their wisdom, for the welfare and honour of himself and all his realm; and that he would hear no person, nor give him any credit, before such matters were brought before the King by the advice and assent of all the Commons, according to the purport of their petition.[1]

The independent right of free discussion in Parliament was further confirmed by the same King, in the ninth year of his reign, who, in a disagreement between the houses concerning the grant of subsidies, declared, by the advice and consent of the Lords,—

"That it shall be lawful for the Lords to debate together in this present Parliament, and in every other for time to come, in the king's absence, concerning the condition of the kingdom, and the remedies necessary for it; and in like manner it shall be lawful for the Commons, on their part, to debate together concerning the said condition and remedies; provided always, that neither the Lords on their part, nor the Commons on their part, do make any report to our lord the king of any grant granted by the Commons, and agreed to by the Lords, nor of the communications of the said grant, before the said Lords and Commons are of one accord and agreement in the said matter."[2]

Interpretation of the privilege.

But notwithstanding the repeated recognition of this privilege, the Crown and the Commons were not always agreed upon its limits. In reply to the usual petition of the Speaker, Sir Edward Coke, in 1593, the lord keeper said, "Liberty of speech is granted you, but you must know what privilege you have; not to speak every one what he listeth, or what cometh in his brain to utter: but your privilege is '*aye*' or '*no*.'"[3] In 1621, the Commons, in their protestation, defined their privilege more consistently with its present limits. They affirmed "that every member hath freedom from all

[1] 3 Rot. Parl. 456. [2] Ib. 611. [3] 1 Parl. Hist. 862.

impeachment, imprisonment, or molestation, other than by censure of the house itself, for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the Parliament or Parliament business."[1]

Violations of the privilege.

It is needless to recount how frequently this privilege was formerly violated by the power of the Crown. The Act of the 4th of Henry VIII. extended no further than to protect members from being questioned, in other courts, for their proceedings in Parliament: but its principle should equally have saved them from the displeasure of the Crown. The cases of Mr. Strickland, in 1571,[2] of Mr. Cope, Mr. Wentworth, and others, in 1586,[3] and of Sir Edwin Sandys, in 1621,[4] will serve to remind the reader how imperfectly members were once protected against the unconstitutional exercise of prerogative.

Sir J. Eliot and others.

The last occasion on which the privilege of freedom of speech was directly impeached, was in the celebrated case of Sir John Eliot, Denzil Hollis, and Benjamin Valentine, against whom a judgment was obtained in the King's Bench, in the 5th Charles I., for their conduct in Parliament. On the 8th July 1641, the House of Commons declared all the proceedings in the King's Bench to be against the law and privilege of Parliament.[5] The prosecution of those members was, indeed, one of the illegal acts which hastened the fate of Charles I. It was strongly condemned in the Petition of Right, and, after the Restoration, it was not forgotten by the Parliament.

The judgment had been given against the privilege of Parliament, upon the false assumption that the Act of the 4th Henry VIII. had been simply a private statute for the relief of Strode, and had no general operation; and in order to condemn this construction of the plain words of the statute, the Commons resolved, on the 12th November 1667,

[1] 1 Hatsell, 79.
[2] D'Ewes, 166. 4 Parl. Hist. 153.
[3] D'Ewes, 410.
[4] 1 Com. J. 635. 1 Hatsell, 136, 137
[5] 2 Com. J. 203. 3 St. Tr. 235-335.

"That the Act of Parliament in 4th Henry VIII., commonly intituled 'An Act concerning Richard Strode,' *is a general law*, extending to indemnify all and every the members of both houses of Parliament, in all Parliaments, for and touching any bills, speaking, reasoning, or declaring of any matter or matters in and concerning the Parliament to be communed and treated of; *and is a declaratory law of the ancient and necessary rights and privileges of Parliament.*"[1] And on a subsequent day they also resolved, "That the judgment given, 5 Car., against Sir John Eliot, Denzil Hollis, and Benjamin Valentine, in the King's Bench, was an illegal judgment, and against the freedom and privilege of Parliament."[2] A conference was afterwards demanded with the Lords, and their lordships agreed to the resolutions of the Commons;[3] and, finally, upon a writ of error, the judgment of the Court of King's Bench was reversed by the House of Lords, on 15th April 1668.[4]

Its recognition by statute.

This would have been a sufficient recognition by law of the privilege of freedom of speech: but a further and last confirmation was reserved for the Revolution of 1688. By the 9th Article of the Bill of Rights it was declared, "That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament."[5]

But, although by the ancient custom of Parliament, as well as by the law, a member may not be questioned out of Parliament, he is liable to censure and punishment by the house itself, of which he is a member. The cases in which members have been called to account and punished for offensive words spoken before the house, are too numerous to mention.[6] Some have been admonished, others imprisoned, and in the Commons some have even been expelled.[7] Mem-

[1] 9 Com. J. 19.
[2] Ib. 25.
[3] 12 Lords' J. 166.
[4] Ib. 223.
[5] 1 Will. & Mary, sess. 2, c. 2.
[6] 4 Lords' J. 475; 5 Ib. 77. Sir R. Canne, 1680; 9 Com. J. 642. Mr. Manley, 1696; 11 Ib. 581.
[7] Mr. Shepherd, 1 Ib. 524.

bers using unparliamentary language are promptly called to order, and generally satisfy the house with an explanation or apology;[1] if not, they will be suspended under the recent Standing Order, or punished as the House may think fit.[2]

Privilege does not extend to speeches separately published.

If a member should say nothing disrespectful to the house or the chair, or personally opprobrious to other members, or in violation of other rules of the House, he may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege from any action for libel, as well as from any other question or molestation. And here it may be noticed, that the rule by which all published reports of debates are ignored by Parliament, is an auxiliary to the privilege of freedom of speech. What is said in Parliament, is supposed to be unknown elsewhere, and cannot be noticed without a breach of privilege: but if a member should proceed to publish his speech, his printed statement will be regarded as a separate publication, unconnected with any proceedings in Parliament. This construction of the law cannot be complained of by the houses of Parliament, as by their rules and orders, the publication of a debate is forbidden; and it is therefore impossible to protect, by privilege, an irregular act, which is itself declared to be a breach of privilege. This view of the law has been established by two remarkable cases.

Lord Abingdon's case.

In 1795, an information was filed against Lord Abingdon for a libel. His lordship had accused his attorney of improper conduct in his profession, in a speech delivered in the House of Lords, which he afterwards had printed in several newspapers, at his own expense. His lordship pleaded his own case in the Court of King's Bench, and contended that he had a right to print what he had, by the law of Parliament, a right to speak: but Lord Kenyon said, that "a member of Parliament had certainly a right to publish his

[1] See Chapter XI. on DEBATE.

[2] Case of Mr. O'Donnell, 30th June and 3rd July 1882; 137 Com. J. 323. 328.

speech, but that speech should not be made a vehicle of slander against any individual; if it was, it was a libel." The court gave judgment that his lordship should be imprisoned for three months, pay a fine of 100*l.*, and find security for his good behaviour.[1]

Mr. Creevey's case.

In 1813, a much stronger case occurred. Mr. Creevey, a member of the House of Commons, had made a charge against an individual in the house, and incorrect reports of his speech having appeared in several newspapers, Mr. C. sent *a correct report* to the editor of a Liverpool paper, with a request that he would publish it in his newspaper. Upon an information filed against him, the jury found the defendant guilty of libel, and the King's Bench refused an application for a new trial, Lord Ellenborough saying:

"A member of that house has spoken what he thought material, and what he was at liberty to speak, in his character as a member of that house. So far he is privileged; but he has not stopped there; but, unauthorized by the house, has chosen to publish an account of that speech, in what he has pleased to call a corrected form; and in that publication has thrown out reflections injurious to the character of an individual."[2]

Mr. Creevey, who had been fined 100*l.*, complained to the house of the proceedings of the King's Bench; but the house refused to admit that they were a breach of privilege.[3]

Mr. Wason's case.

The Lord Chief Justice of England, in a more recent case, further laid it down, that "if a member publishes his own speech, reflecting upon the character of another person, and omits to publish the rest of the debate, the publication would not be fair, and so would not be privileged," but that a fair and faithful report of the whole debate would not be actionable.[4]

Rex *v.* Wright.

The privilege which protects debates, extends also to reports and other proceedings in Parliament. In the case of Rex *v.* Wright,[5] Mr. Horne Tooke applied for a criminal

[1] 1 Esp. N. P. C. 228.
[2] 1 M. & S. 278.
[3] 68 Com. J. 704. Hans. Deb. 25th June 1813.
[4] Wason *v.* Walter, 21st Dec. 1867.
[5] 8 Term Reports, 293.

information against a bookseller for publishing the copy of a report made by a Committee of the House of Commons, which appeared to imply a charge of high treason against Mr. Tooke, after he had been tried for that crime and acquitted. The rule, however, was discharged by the court, partly because the report did not appear to bear the meaning imputed to it, and partly because the court would not regard a proceeding of either house of Parliament as a libel.

Publication of parliamentary papers.

By the 3 & 4 Vict. c. 9, which was passed in consequence of the decision of the Court of Queen's Bench in the memorable case of Stockdale *v.* Hansard, it was enacted that proceedings, criminal or civil, against persons for the publication of papers printed by order of either house of Parliament, shall be immediately stayed, on the production of a certificate, verified by affidavit, to the effect that such publication is by order of either house of Parliament. Proceedings are also to be stayed, if commenced on account of the publication of a *copy* of a Parliamentary paper, upon the verification of the correctness of such copy; and in proceedings commenced for printing any extract from, or abstract of, a Parliamentary report or paper, the defendant may give the report in evidence under the general issue, and prove that his own extract or abstract was published *bonâ fide* and without malice; and if such shall be the opinion of the jury, a verdict of Not guilty will be entered.[1]

[1] 3 & 4 Vict. c. 9, s. 3.

CHAPTER V.

FREEDOM FROM ARREST OR MOLESTATION: ITS ANTIQUITY, LIMITS, AND MODE OF ENFORCEMENT. PRIVILEGE OF NOT BEING IMPLEADED IN CIVIL ACTIONS: OF NOT BEING LIABLE TO BE SUMMONED BY SUBPŒNA, OR TO SERVE ON JURIES. COMMITMENT OF MEMBERS BY COURTS OF JUSTICE. PRIVILEGE OF WITNESSES AND OTHERS IN ATTENDANCE ON PARLIAMENT.

Antiquity of this privilege.

The privilege of freedom from arrest or molestation is of great antiquity, and dates, probably, from the first existence of parliaments or national councils in England. By some writers its recognition by the law has been traced so far back as the time of Ethelbert, at the end of the sixth century, in whose laws it is said, "If the king call his people to him, (*i. e.* in the witena-gemót), and any one does an injury to one of them, let him pay a fine."[1] Blackstone has shown that it existed in the reign of Edward the Confessor, in whose laws we find this precept, "Ad synodos venientibus, sive summoniti sint, sive per se quid agendum habuerint, sit summa pax;" and so, too, in the old Gothic constitutions, "Extenditur hæc pax et securitas ad quatuordecim dies, convocato regni senatu."[2] In later times there are various precedents explanatory of the nature and extent of this privilege, and of the mode in which it was sustained. From these it will be seen that not only are the persons of members of both Houses of Parliament free from arrest on mesne process or in execution, but that formerly the same immunity was enjoyed in regard to their servants and their property. The privilege was strained still further, and even claimed to protect members and their servants from all civil actions or suits, during the time over which privilege was supposed to extend.

[1] Wilkins, Leges Anglo-Sax. p. 2. 2 Hallam, Middle Ages, 231. 2 Kemble, Saxons in England, 33.

[2] 1 Comm. 165. Stiernh. de Jure Goth.

The privilege of freedom from arrest has also been construed to discharge members and their servants from all liability to answer subpœnas in other courts and to serve on juries, and in some cases to relieve them from commitments by courts of justice.

Privileges enumerated.

These various immunities have undergone considerable changes and restrictions; and being now defined, for the most part, with tolerable certainty, they will be best understood by considering them in the following order: 1. Privilege of members and their servants from arrest and distress, and the mode of enforcing it. 2. Their protection from being impleaded in civil actions. 3. Their liability to be summoned by subpœna, or to serve on juries. 4. Their privilege in regard to commitments by legal tribunals. 5. Privilege of witnesses and others in attendance on Parliament. It may, however, be stated at once, that although many cases that will be given, apply equally to members and to their servants, according to the privilege existing in those times, the latter have, at present, no privilege whatever.[1] These cases, though at variance with modern usage, could not be omitted consistently with a complete view of the privilege of freedom from arrest and molestation.

Freedom from arrest and distress of goods.

So far back as the 19th of Edward I., in answer to a petition of the Master of the Temple for leave to distrain for the rent of a house held of him by the Bishop of St. David's, the king said, "It does not seem fit that the king should grant that they who are of his council should be distrained in time of Parliament."[2] From this precedent Sir Edward Coke infers that at that time a member of Parliament had privilege, not only for his servants, but for his horses or other goods distrainable.[3] The privilege was also acknowledged very distinctly by the Crown in the case of the Prior of Malton, in the 9th Edward II.[4]

The freedom, both of the Lords and Commons, and their

[1] See *supra*, p. 69, note.
[2] 1 Rot. Parl. 61.
[3] 4th Inst. 24 E.
[4] 1 Hatsell, 12.

servants, from all assaults or molestation, when coming to Parliament, remaining there, and returning thence, was distinctly recognized in the case of Richard Chedder, a member, by statute 5 Henry IV. c. 6, and again by another statute of the 11th Henry VI. c. 11. In the 5th Henry IV., the Commons, in a petition to the king, alleged that, according to the custom of the realm, the lords, knights, citizens, and burgesses were entitled to this privilege; and this was admitted by the king: who, instead of agreeing to the proposition of the Commons, that treble damages should be paid by parties violating their privilege, answered that there was already a sufficient remedy.[1] Hence this privilege appears, distinctly, not to have been created by statute, but to have been confirmed as the ancient law and custom of Parliament and of the realm. Much later, viz., in the 17th Edward IV., the Commons affirmed in Atwyll's case, that the privilege had existed "whereof tyme that mannys mynde is not the contrarie;"[2] thus placing it on the ground of prescription, and not on the authority of statutes then in force.

Chedder's case.

Atwyll's case.

The only exception to the recognition of this privilege was in the extraordinary case of Thorpe, the Speaker of the Commons who was imprisoned in 1452, under execution from the Court of Exchequer, at the suit of the Duke of York. The judges delivered their opinion to the Lords, "That if any person that is a member of this High Court of Parliament be arrested in such cases as be not for treason or felony, or surety of the peace, or for a condemnation had before the Parliament, it is used that all such persons should be released of such arrests, and make an attorney, so that they may have their freedom and liberty freely to attend upon the Parliament." As Thorpe was in execution for a civil action that had been brought during an adjournment, he was obviously entitled to his release, according to the opinion of the judges; yet it is entered on the rolls of

Thorpe's case.

[1] 3 Rot. Parl. 541.

[2] 6 Rot. Parl. 191.

Parliament, that after having "heard this answer and declaration, it was thoroughly agreed, assented, and concluded, by the lords spiritual and temporal, that the said Thomas, according to the law, should still remain in prison, the privilege of Parliament, or that the said Thomas was Speaker of the Parliament, notwithstanding."[1] Yet even here it is worthy of notice, that the privilege of Parliament was admitted, though adjudged to be overruled by the law. The whole case, however, has been regarded as irregular and "begotten by the iniquity of the times."[2] Down to 1543, although the privilege had been recognized by statute, by declaration of both houses,[3] by the frequent assent of the king,[4] and by the opinions of the judges,[5] the Commons did not deliver their members out of custody by their own authority: but when the members were in execution, in order to save the rights of the plaintiff, they obtained special statutes to authorize the lord chancellor to issue writs for their release;[6] and when confined on mesne process only, they were delivered by a writ of privilege issued by the lord chancellor.[7] And in the singular case of Mr. Speaker Thorpe, already mentioned, the Commons even submitted the vindication of their privilege to the House of Peers, as well as to the king.[8]

Release of members from custody.

At length, with sudden energy, the Commons, for the first time, vindicated the privilege of Parliament, and acted independently of any other power. In 1543, George Ferrers, a member, was arrested in London, by a process out of the King's Bench, at the suit of one White, as surety for the debt of another. The house, on hearing of his arrest, ordered the serjeant to go to the Compter and demand his delivery. The

Case of George Ferrers.

[1] 5 Rot. Parl. 239.

[2] 1 Com. J. 546.

[3] Larke's case, "Le Roi, par advis des seigneurs espirituelx et temporelx, et a les especiales requestes des communes."—4 Rot. Parl. 357. Atwyll's case, 6 Rot. Parl. 191.

[4] Larke's case, 4 Rot. Parl. 357. Parr's case, 5 Rot. Parl. 111. Hyde's case, 6 Rot. Parl. 160.

[5] Thorpe's case, 5 Rot. Parl. 239.

[6] Cases of Larke, Clerk, Hyde, and Atwyll, 4 Rot. Parl. 357; 5 Ib. 374; 6 Ib. 160. 191.

[7] Sadcliff's case, 1 Hatsell, 51.

[8] 32 Hen. VI., 5 Rot. Parl. 239.

serjeant was resisted by the city officers, who were protected by the sheriffs; and he was obliged to return without the prisoner. The house then rose as a body, and laid their case before the Lords, "who, judging the contempt to be very great, referred the punishment thereof to the order of the Commons' house." The Commons ordered the serjeant to repair to the sheriffs, and to require the delivery of Ferrers, without any writ or warrant. The lord chancellor had offered them a writ of privilege, but they refused it, "being of a clear opinion that all commandments and other acts proceeding from the neather house were to be done and executed by their serjeant without writ, only by show of his mace, which was his warrant." The sheriffs, in the meantime, were alarmed, and surrendered the prisoner; but the serjeant, by order of the house, required their attendance at the bar, together with the clerks of the Compter, and White, the plaintiff; and on their appearance, they were all committed for their contempt.

The king, on hearing of these proceedings, called before him the lord chancellor, the judges, the Speaker, and some of the gravest persons of the lower house, and addressed them. Having commended the wisdom of the Commons in maintaining the privileges of their house, and stated that even their cooks were free from arrest, he is reported to have used these remarkable words:

"And further, we are informed by our judges, that we at no time stand so highly in our estate royal, as in the time of Parliament; wherein we as head, and you as members, are conjoined and knit together into one body politick, so as whatsoever offence or injury, during that time, is offered to the meanest member of the house, is to be judged as done against our person and the whole court of Parliament; which prerogative of the court is so great (as our learned counsel informeth us), that all acts and processes coming out of any other inferior courts, must for the time cease, and give place to the highest."

When the king had concluded his address, "Sir Edward Montague, the lord chief justice, very gravely declared his

opinion, confirming by divers reasons all that the king had said, which was assented unto by all the residue, none speaking to the contrary."

As this case rests upon the authority of Holinshed,[1] and not upon parliamentary records, its accuracy has sometimes been doubted: but the positions there maintained are so conformable with the law of Parliament, as since asserted, the circumstances are so minutely stated, and were of so notorious a character, that there can be little ground for distrusting the general correctness of the account. Its probability is confirmed by the fact that Ferrers was a servant of the King, and the proceedings of the Commons on his behalf were therefore the more likely to be acceptable to his Majesty, and to be sanctioned by his councillors and the House of Lords.[2]

The practice of releasing members by a writ of privilege was still continued, notwithstanding the course pursued in the case of Ferrers: but henceforward no such writ was sufferred to be obtained without a warrant previously signed by the Speaker. Thirty years later, Smalley, the servant of a member, being under arrest, "was ordered to be brought hither to-morrow by the serjeant, and so set at liberty by warrant of the mace, and not by writ."[3] Again, in 1592, in the case of Mr. Fitzherbert, a member, who had been outlawed and taken in execution, the house, after many discussions as to his title to privilege, and concerning the manner in which he should be delivered, were at length acquainted that the lord keeper thought it best, "in regard to the ancient liberties and privileges of the house, that a serjeant-at-arms be sent, by order of the house, for Mr. Fitzherbert, by which he may be brought hither without peril of being further arrested by the way, and the state of the matter then considered of and examined into."[4] In this case, however, the house determined that the member should not have privilege; "first,

Smalley s case.

Fitzherbert's case.

[1] 1 Holinshed, 824.
[2] 1 Hatsell, 57.
[3] 27th Feb. 1575, 1 Com. J. 108.
[4] D'Ewes, 482. 514. 1 Hatsell, 107.

because he was taken in execution before the return of the indenture of his election; secondly, because he had been outlawed at the Queen's suit, and was now taken in execution for her Majesty's debt; thirdly, in regard that he was so taken by the sheriff, neither sedente Parliamento, nor eundo, nor redeundo."[1]

This case was scarcely settled, when Mr. Neale, a member, complained that he had been arrested upon an execution; that he had paid the money, but out of regard to the liberties and privileges of the house, he thought it his duty to acquaint them with it. Upon which the house committed to the Tower the person at whose suit the execution was obtained, and the officer who executed it. Three days afterwards the prisoners were reprimanded and discharged.[2] Neale's case.

The principal cases in the Lords, up to this period, show an uncertainty in their practice similar to that of the Commons; privileged persons being sometimes released immediately, and sometimes by writs of privilege. On the 1st December 1585, they ordered to be enlarged and set at liberty James Diggs, servant to the Archbishop of Canterbury, "by virtue of the privilege of this court:"[3] and again, in the same year, a servant of Lord Leicester,[4] and in 1597, the servants of Lord Chandois and the Archbishop of Canterbury.[5] In the two last cases the officers who had arrested the prisoners were committed by the house. Later still, in November 1601, they adopted the precedent of Ferrers. William Hogan, like Ferrers, a servant of the Queen, was imprisoned in execution; and the Lords debated whether he should be discharged by a warrant from the Lords to the lord keeper, to grant a writ in the Queen's name for bringing up Hogan, or by immediate direction and order of the house, without any writ; and at length it was agreed that he should be brought up by order from the house. By virtue of their Cases in the Lords.

[1] D'Ewes, 518.
[2] Ib. 518. 520.
[3] 2 Lords' J. 66.
[4] Ib. 93.
[5] Ib. 201. 205.

order, he was brought up and discharged on giving a bond for the payment of his debt; and the under-sheriff was committed to the Fleet for having arrested him.[1] Yet, soon afterwards, in Vaughan's case, the Lords resorted to the old method of discharging a prisoner by an order to the lord keeper for a writ of privilege; after having first committed the keeper of Newgate for refusing to obey their order to bring up his prisoner,[2]

These cases have been cited not only as illustrative of the ancient claims of privilege, but also as throwing light, incidentally, upon the general law and privilege of Parliament. But it is now time to pass to the modifications of the ancient privilege which have since been effected by statute; and to the modern practice of Parliament, in protecting members from arrest.

Sir T. Shirley's case.

In 1603, the case of Sir Thomas Shirley occasioned a more distinct recognition of the privilege by statute, and an improvement in the law. Sir Thomas had been imprisoned in the Fleet, in execution, before the meeting of Parliament, and the Commons first tried to bring him into the house by habeas corpus, and then sent their serjeant to demand his release. The warden refused to give up his prisoner, and was committed to the Tower for his contempt. Many proposals were made for releasing their member: but as none were free from objection, the house endeavoured to coerce the warden, and committed him to the prison called "Little Ease," in the Tower. At length the warden, either overcome by his durance, or commanded by the king, delivered up the prisoner, and was discharged, after a reprimand.[3] So far the privileges of the house were satisfied: but there was still a legal difficulty to be overcome, that had been common to all cases in which members were in execution, viz., that the warden was liable to an action of escape, and the creditor

[1] 2 Lords' J. 230. D'Ewes, 603.
[2] 2 Lords' J. 238. 240. D'Ewes, 607.
[3] 1 Com. J. 155 *et seq.* 5 Parl. Hist. 113, &c. 1 Hatsell, 157.

had lost his right to an execution.[1] In former cases a remedy had been provided by a special Act, and the same expedient was now adopted: but in order to provide for future cases of a similar kind, a general Act was also passed.

Statutes relating to freedom from arrest.

The Act 1 James I. c. 13, after stating that "doubts had been made, if any person, being arrested in execution, and by privilege of Parliament set at liberty, whether the party at whose suit such execution was pursued, be for ever barred and disabled to sue forth a new writ of execution in that case;" proceeded to enact, that after such time as the privilege of that session in which privilege is granted shall cease, parties may sue forth and execute a new writ; and that no sheriff, &c. from whose arrest or custody persons shall be delivered by privilege, shall be chargeable with any action. Lastly, the Act provided that nothing therein should "extend to the diminishing of any punishment to be hereafter by censure in Parliament inflicted upon any person who shall hereafter make or procure to be made any such arrest." Three points are here distinctly recognized; viz., 1, the privilege of freedom from arrest; 2, the right of either house of Parliament to set a privileged person at liberty; and, 3, the right to punish those who make or procure arrests: while two other points were for the first time established; viz., that the officer should not be liable to an action of escape, and that the debt should not be satisfied.

But although the privilege of either house of Parliament was admitted to entitle a prisoner to his release, the manner of releasing him was still indefinite; and for some time it continued to be the practice, where privileged persons had been imprisoned in execution, to issue warrants for a writ of privilege or a writ of habeas corpus.[2] In 1625, however, the Commons declared, "that the house hath power, when they see cause, to send the serjeant immediately to deliver a

[1] See 1 Com. J. 173. 195; and Collection of Precedents, 10 Ib. 401.

[2] 2 Lords' J. 270. 296. 299. 302. 588; 3 Ib. 30. 1 Hatsell, 167, 168.

prisoner;[1] and in some cases during the 17th century, peers and members arrested in execution were released without any writ of privilege or habeas corpus,[2] as Lord Baltinglasse in 1641,[3] Lord Rich in 1646,[4] and Sir Robert Holt in 1677.[5]

During the same period also, when the property of peers or of their servants was distrained, the Lords were accustomed to interfere by their direct authority, as in 1628, in the case of a ship belonging to the Earl of Warwick;[6] and in 1648, in regard to the tenants of Lord Montague:[7] but privilege did not attach to property held by a peer as a trustee only.[8] In cases of arrest on mesne process, the practice of releasing the prisoners directly by a warrant,[9] or by sending the black rod or serjeant, in the name of the house, to demand them,[10] was continually adopted.

At length, in the year 1700, an Act was passed,[11] which, while it retained the privilege of freedom from arrest with more distinctness than the 1st James I., made the goods of privileged persons liable to distress infinite and sequestration, between a dissolution or prorogation and the next meeting of Parliament, and during adjournments for more than fourteen days. In suits against the king's immediate debtors, execution against members was permitted even during the sitting of Parliament, and the privilege of freedom from arrest in such suits was not reserved to servants. Again, by the 2 & 3 Anne, c. 18, executions for penalties, forfeitures, &c. against privileged persons, being employed in the revenue or any

[1] 1 Com. J. 820.

[2] Hatsell states, that "since the end of Elizabeth's reign we have not actually met with any instance where a person entitled to privilege, if in custody in execution, hath been delivered by any other mode than by virtue of a writ of privilege, or by a writ of habeas corpus."—(Vol. i. p. 167.) But this statement had reference to the period from the accession of James I. to 1628; and unless it be understood with this limitation, it is calculated to mislead.

[3] 4 Lords' J. 654.

[4] 8 Ib. 635. 639.

[5] 9 Com. J. 411.

[6] 3 Lords' J. 776, 777.

[7] 10 Ib. 611.

[8] 12 Ib. 194. 390; 14 Ib. 36. 78; 16 Ib. 294; 22 Ib. 412.

[9] Bassett's case, 1 Com. J. 807.

[10] 4 Lords' J. 654; 8 Ib. 577. 601. Boteler's case, 17 Com. J. 6.

[11] 12 & 13 Will. III. c. 3, afterwards extended by 11 Geo. II. c. 24.

office of trust, were not to be stayed by privilege. Freedom from arrest, however, was still maintained for the members of both houses, in such cases, but not for their servants.

Servants' privilege discontinued.

By the 10 Geo. III. c. 50, a very important limitation of the freedom of arrest was effected. Down to that time the servants of members had been entitled to all the privileges of their masters, except as regards the limitations effected by the two last statutes: but by the 3rd section of the 10 Geo. III., the privileges of members to be free from arrest upon all suits, authorized by the act, was expressly reserved; while no such reservation was introduced in reference to their servants. And thus, without any distinct abrogation of the privilege, it was, in fact, put an end to, as executions were not to be stayed in their favour, and their freedom from arrest was not reserved.

Members, how released at present.

By these several statutes the freedom of members from arrest has become a legal right rather than a parliamentary privilege. The arrest of a member has been held, therefore, to be irregular, *ab initio*, and he may be discharged immediately, upon motion in the court from which the process issued.[1]

For the same reason writs of privilege have been discontinued. In 1707, a few years after the passing of the 12 & 13 Will. III., the serjeant was sent with the mace to the warden of the Fleet, who readily paid obedience to the orders of the house, and discharged Mr. Asgill, a member then in execution.[2] Peers, peeresses, and members are now discharged directly by order or warrant, and the parties who cause the arrest are liable to censure and punishment, as in the case of the Baroness Le Cale, in 1811;[3] and Viscount Hawarden, in 1828.[4]

In 1807, Mr. Mills had been arrested on mesne process, and was afterwards elected. The house determined that he was entitled to privilege, and ordered him to be discharged out of

[1] Colonel Pitt's case, 2 Strange, 985. K. B. Cases, temp. Hard. 28.

[2] 15 Com. J. 471.

[3] 48 Lords' J. 60. 63.

[4] 60 Ib. 34 (and Report of Precedents, 28).

the custody of the marshal of the King's Bench.[1] In 1819, Mr. Christie Burton had been elected for Beverley, but being in custody on execution, and also on mesne process, was unable to attend his service in Parliament. The house determined that he was entitled to privilege, and ordered him to be discharged out of the custody of the warden of the Fleet.[2] An action was brought against the warden by the assignees of a creditor of Mr. Burton, for his escape, who were declared guilty of a breach of privilege, and ordered to attend the house:[3] but having acknowledged their offence by petition, they were not subjected to any punishment.

Duration of privilege.

It now only remains to inquire what is the duration of the privilege of freedom from arrest; and it is singular that this important point has never been expressly defined by Parliament. The person of a peer (by the privilege of peerage) "is for ever sacred and inviolable."[4] This immunity rests upon ancient custom, and is recognized by the Acts 12 & 13 Will. III. c. 3, and 2 & 3 Anne, c. 18. It would seem to have been an ancient feudal privilege of the barons, the law assuming that there would always be, upon the demesnes of their baronies, sufficient to distrain for the satisfaction of any debt.[5] Peeresses are entitled to the same privilege as peers, whether they be peeresses by birth, by creation, or by marriage;[6] but if a peeress by marriage should afterwards intermarry with a commoner, she forfeits her privilege.[7] It is also ordered and declared by the Lords, that privilege of Parliament shall not be allowed to minor peers, noblewomen, or widows of peers (saving their right of peerage).[8]

Peeresses.

Representative peers.

And by the 23rd Article of the Act of Union with Scotland

[1] 62 Com. J. 654.

[2] 74 Ib. 44.

[3] 75 Ib. 286.

[4] 1 Blackstone, Comm. 165.

[5] 1 West. Inq. 27.

[6] Countess of Rutland's case, 6 Co. 52. Cases of Lady Purbeck, 1625; Lady Della Warr, 1642; Lady D'Acre, 1660; Lady Petre, 1664; Countess of Huntingdon, 1676; Countess of Newport, 1699; Lady Abergavenny, 1727; 60 Lords' J. 28–31.

[7] Co. Litt. 166. 4 Bacon's Abridg. 229. Lords' S. O. No. 53. 11 Lords' J. 298; 15 Ib. 241.

[8] Lords' S. O. No. 53. See also 12 Lords' J. 714; 13 Ib. 67. 79, 80. 659.

(5 Anne, c. 8), the sixteen representative peers are allowed all the privileges of the peers of the Parliament of Great Britain; and all other peers and peeresses of Scotland, though not chosen, enjoy the same privileges.[1] In the same manner, by the Act of Union with Ireland, the peers and peeresses of Ireland are entitled to the same privileges as the peers and peeresses of Great Britain.[2]

Authorities as to the duration of privileges.

With regard to members of the House of Commons, "the time of privilege" has been repeatedly mentioned in statutes, but never explained. It is stated by Blackstone and others, and has been the general opinion, that the privilege of freedom from arrest remains with a member of the House of Commons "for forty days after every prorogation, and forty days before the next appointed meeting:" but the learned commentator cites the case of the Earl of Athol *v.* the Earl of Derby,[3] which hardly supports so distinct a conclusion. It appears from the report of that case, that the Lords claim privilege for twenty days only, before and after each session; and the report adds, "But, *it is said*, the Commons never assented to this, but *claim* forty days after and before each session." In another report of the same case, it is also said, that "they claim forty days;"[4] and in another report, "that the Commons claimed forty days, which ought not to be allowed."[5] But that the Commons have claimed so long a duration of this immunity, there are no precedents to show. By the original law of Parliament, privilege extended to the protection of members and their servants, "eundo, morando et exinde redeundo:" but Parliament has never yet determined what time shall be considered convenient for this purpose; and Prynne expresses an opinion, that no such definite extent of privilege is claimable by the law of Parliament.[6] There has, however, been a general belief and tradition

[1] 2 Strange, 990. 60 Lords' J. 28.

[2] Case of Viscount Hawarden, an Irish Peer, 31st Jan. 1828; 60 Lords' J. 15; Rep. Com. of Privileges, Ib. 28; 18 Hans. Deb. 2nd Ser. 69; Lord Colchester's Diary, iii. 544, 545.

[3] 2 Levinz, 72.

[4] 1 Chan. Cas. 221.

[5] Sid. 29.

[6] 4 Prynne, Reg. 1216.

(founded, probably, upon the ancient law and custom, by which writs of summons for a Parliament were always issued at least forty days before its appointed meeting), that privilege extended to forty days; and several acts of the Irish Parliament have defined that time as the duration of privilege in Ireland.[1] Parliamentary precedents alone will not be found to establish this extent of privilege in England: but it has been allowed by the courts of law, on the ground of usage and universal opinion. And by reason of frequent prorogations, the enjoyment of this privilege is never liable to interruption.

Pledall's case.

On the 6th December 1555, a case occurred, which has been relied upon as a declaration of Parliament concerning the duration of privilege, but to which no importance can be attached. The Commons sent a message to the Lords, to complain that their privilege was broken, by reason of Gabriel Pledall, a member, having been bound in a recognizance in the Star Chamber, to appear before the council within twelve days after the end of the Parliament, which was about to be dissolved. A message was afterwards received for six members to confer with the Lords, who went, and reported, on their return, "that the chief justices, master of the rolls, and serjeants, do clearly affirm that the recognizance is no breach of the privilege."[2] From this case Prynne infers that the Commons "have not twelve, much less twenty or forty days, after the Parliament ended:" but no such inference can be supported, for it does not appear whether the opinion of the judges related to the recognizance itself, or to the duration of the privilege after the dissolution. The case is not mentioned in the Lords' Journal; the Lords were not said to have pronounced this opinion, but only the judges; and there was no acquiescence on the part of the Commons, for the Parliament was dissolved two days afterwards.

Mr. Marten's case.

In the case of Mr. Marten, in 1586, who had been

[1] See 3 Edw. IV. c. 1, Ir. 6 Anne, c. 3, Ir. 1 Geo. II. c. 8, s. 2, Ir.

[2] 1 Com. J. 46.

arrested twenty days before the meeting of Parliament, the question was put, whether the house would limit any time for privilege? The house answered a convenient time: but they determined that the twenty days were within a convenient time, and that Mr. Marten should, therefore, be discharged.[1] Twenty days, therefore, have been allowed, which would exclude any inference from Pledall's case.

Resolutions in both houses.

On the 14th December 1621, the Lords resolved that their servants were free from arrest "for twenty days before and after every session; in which time the Lords may conveniently go home to their houses, in the most remote parts of this kingdom."[2] And again, on the 28th May 1624, they adopted a similar resolution.[3] On the 27th January 1628, they added, that this freedom should "begin with the date of the writ of summons, in the beginning of every Parliament, and continue twenty days before and after every session of Parliament."[4] On the 24th April 1640, it was "said in the House of Commons, and not contradicted, that members had privilege for sixteen days exclusive, and fifteen days inclusive, before the beginning and ending of every Parliament;" and in a case of privilege considered on that day, it is entered, "the contempt of his arrest to be declined, because it was not committed within time of privilege, viz., within sixteen days before the beginning of the Parliament, or so many days after."[5] And on the 17th January 1689, the Lords declared that the freedom of their servants should begin twenty days before the return of the writ of summons, and continue twenty days before and after every session.[6]

A confirmation of the claim of forty days, however, has been indirectly found in the several Acts of Parliament relating to the privilege of franking letters (since abolished by statute), in which the power of franking was given to mem-

[1] D'Ewes, 410. 1 Hatsell, 100.
[2] 3 Lords' J. 195.
[3] Ib. 417.
[4] 4 Lords' J. 13. 1 Hatsell, 41, *n.*
[5] 2 Com. J. 10.
[6] Lords' S. O. No. 55.

bers for forty days before any summons, and forty days after any prorogation.[1]

Mr. Duncombe's case.

On the 7th September 1847, Mr. Duncombe claimed and was allowed his privilege, by a judge's order. He had been elected, at the general election, on the 28th of July, and it was argued that his privilege had expired on the 2nd September. The writs for the new Parliament were returnable on the 21st September: but Parliament was prorogued, by writ, to the 12th October. The 2nd September was forty days after the dissolution, but within twenty days of the 21st September, the day first appointed for the meeting of Parliament. It was contended, in opposition to the claim of privilege—1st, that twenty days was a sufficient time; and, secondly, supposing a longer period to be allowed, that the period should be reckoned to the 12th October, which would leave the member forty days for coming to Parliament. Mr. Justice Williams, however, was satisfied that the privilege extended to forty days, and that the period must be reckoned to the 21st September only. On a motion for rescinding the judge's order, the Chief Baron, in delivering the judgment of the court, at once determined that the period must be reckoned to the 21st September, as the day on which the writs were returnable; and after citing the authorities as to the duration of privilege, concluded in these words: "We think that the conclusion to be drawn from all that is to be found in the books on the subject is this: that whether the rule was originally for a convenient time, or for a time certain, the period of forty days before and after the meeting of Parliament has for about two centuries, at least, been considered either a convenient time, or the actual time to be allowed. Such has been the usage, the universally prevailing opinion on the subject; and such, we think, is the law."[2]

After dissolution.

It has been determined by the courts of law, that the privi-

[1] For a history of this privilege, see Report, 16th April 1735.

[2] Welsby, H. & G. 430.

lege, even after a dissolution, is still enjoyed for a convenient and reasonable time for returning home.[1] What this convenient time may be, has never been determined; but the general claim of exemption from arrest, *eundo et redeundo*, extends as well to dissolutions as to prorogations, as no distinction is made between them.

Members in execution before their election.

These cases apply to arrests made after the privilege has accrued: but the effect of the election of a person already in execution still remains to be considered. In Thorpe's case the judges excepted from privilege the case of "a condemnation had before the Parliament;" but their opinion has not been sustained by the judgment of Parliament itself. Unless a member has incurred some legal disability, or has subjected himself to processes more stringent than those which result from civil actions, it has been held that his service in Parliament is paramount to all other claims. Thus in 1677, Sir Robert Holt was discharged, although he had been "taken in execution out of privilege of Parliament;"[2] and, not to mention intermediate cases, or any which are of doubtful authority,[3] Mr. Christie Burton obtained his release in 1819, although he had been in the custody of the warden of the Fleet before his election.[4]

Persons under arrest becoming peers.

A person succeeding to a peerage while under arrest, is entitled to his discharge in virtue of his privilege. On the 1st January 1849, Lord Harley having succeeded, by the death of his father, to the earldom of Oxford, applied to a judge in chambers (Mr. Baron Platt), for his discharge from the Queen's Prison. It was submitted that he was not entitled to privilege until he had taken his seat as a peer: but his position could not be supported by any authorities, and the earl was ordered to be discharged.[5] It has been decided by the Lords that a peer is entitled to privilege

[1] Colonel Pitt's case, 1 Strange, 35. Barnardo *v.* Mordaunt, 1 Lord Ken. 125.

[2] 9 Com. J. 411.

[3] See Reports of Precedents, 10 Com. J. 401. 62 Com. J. 642. 653, 654. 2 Hatsell, 37.

[4] 74 Com. J. 44; 75 Ib. 230.

[5] M'Cabe *v.* Lord Harley.

when he has not qualified himself to sit, by taking the oaths.[1]

Members not admitted as bail.

As a consequence of the immunity of a member of Parliament, it has been held that he cannot be admitted as bail; for not being liable to attachment, by reason of his privilege, he cannot be effectually proceeded against, in the event of the recognizances being forfeited.[2]

Not to be impleaded. Case of Bogo de Clare.

The earliest case in which the privilege of not being impleaded appears to be recorded, is that of Bogo de Clare, in the 18th Edward I. (1290).[3] A complaint was made that the prior of the Holy Trinity in London, by procurement of Bogo de Clare, had cited the Earl of Cornwall, in Westminster Hall, in Parliament time, to appear before the Lord Archbishop of Canterbury. Both of them were sent for, to answer before the king, and having appeared, and submitted themselves, were sent to the Tower. Bogo de Clare afterwards came and paid a fine of two thousand marks to the king. This case has been cited by Sir E. Coke, Elsynge, and others, as a claim of parliamentary privilege: but has latterly been held to have arisen out of the service of a citation in a privileged place;[4] although the words "in Parliament time," would suggest an opposite conclusion.

Writ of supersedeas.

In the 8th Edward II., writs of supersedeas were issued to the justices of assize, to prevent actions from being maintained against members in their absence, by reason of their inability to defend their rights while in attendance upon the Parliament. This privilege appears to have fallen into disuse, for in the 12th Edward IV., it was disallowed in the case of Walsh, a servant of the Earl of Essex. That person

[1] Lords' J. 24th Feb. 1691; 13th May 1720.

[2] Duncan *v.* Hill (1 Dowling & Ryland's Rep. 126); Graham *v.* Sturt (4 Taunton's Rep. 249); Burton *v.* Atherton (2 Marsh. 232); and case of Mr. Feargus O'Connor, who offered himself as bail for Mr. Ernest Jones, 11th June 1848, at Bow Street.

[3] 1 Rot. Parl. 17.

[4] Burdett *v.* Abbot.

[5] 1 Hatsell, 7, 8. "Ne per eorum *absentiam*, dum sic in dicto Parliamento steterint, *exhæredacionem* aliquam sustineant, aliqualiter ve incurrant." And again, "presertim cum absentes jura sua defender nequeant, ut presentes."

pleaded a king's writ, in which his right not to be impleaded was affirmed: but the Lords, with the advice of the judges, determined, that there "was no custom, but that members and their servants might be impleaded;" and they disallowed the writ, and ordered Walsh to plead.[1] In the same year, a similar decision was given in the case of Cosyn.[2] Yet, while this was held to be the law in England, the privilege thus disallowed had been confirmed, not long before, by a statute in the Parliament of Ireland.[3] A few years later, the Commons, in Atwyll's case, claimed it as a prescriptive privilege, that they "should not be impleaded in any action personal;" and their claim seems to have been admitted both by the king and by the House of Lords.[4]

Cases of Walsh and Cosyn.

One of the most marked cases of later times, in which the privilege was enforced, was on the 21st February 1588; when the House of Commons, being informed that several members had writs of nisi prius brought against them, to be tried at the assizes, a motion was made, "that writs of supersedeas might be awarded in these cases, in respect of the privilege of this house, due and appertaining to the members of the same." Upon which it was resolved, "that those of this house which shall have occasion to require such benefit of privilege in that behalf, may repair unto Mr. Speaker, to declare unto him the state of their cases; and that he, upon his discretion, if the case shall so require, may direct the warrant of this house to the lord chancellor of England, for the awarding of such writs accordingly."[5]

At the beginning of the reign of James I., another practice was adopted. Instead of resorting to writs of supersedeas, the Speaker was ordered to stay suits by a letter to the judges,[6] and sometimes by a warrant to the party also;[7] and the parties and their attorneys who commenced the actions

Suits stayed by letter.

[1] 1 Hatsell, 41, 42.
[2] Ib. 43.
[3] 3 Edw. IV. c. 1.
[4] Atwyll's case, 17 Edw. IV.; 6 Rot. Parl. 191.
[5] D'Ewes, 436.
[6] 1 Com. J. 286. 331. 421, &c.
[7] Ib. 804.

were brought, by the serjeant, to the bar of the house.[1] Applications for the stay of suits, at length, became so frequent and troublesome that it was ordered, "where any member of the house hath cause of privilege, to stay any trial, a letter shall issue, under Mr. Speaker's hand, for stay thereof, without further motion in the house."[2] This power of staying suits appears to have been generally acquiesced in by the courts: but in the case of Hodges and Moore, in 1626, the Court of King's Bench refused to obey the Speaker's letter, and was about to return a sharp answer, when the Parliament was dissolved.[3] In numerous instances, however, members agreed to waive their privilege; and upon the petitions of the parties, suits were occasionally allowed to proceed.[4]

Limitations of the privilege by statute.

The privilege insisted upon in this manner, continued until the end of the seventeenth century, when it underwent a considerable limitation by statute. The 12 & 13 Will. III. c. 3, enacted, that any person might commence and prosecute actions against any peer, or member of Parliament, or their servants, or others entitled to privilege, in the courts at Westminster, and the duchy court of Lancaster, immediately after a dissolution or prorogation, until the next meeting of Parliament, and during any adjournment for more than fourteen days; and that during such times, the court might give judgment and award execution. Processes and bills against members were authorized, during the same intervals, to be had or exhibited; and to be enforced by distress infinite or sequestration; and actions against the king's immediate debtors were not to be stayed, at any time, by privilege of Parliament. The privilege was thus limited in its operation: but it was still acknowledged, especially by the third section, which provided that where actions were stayed by privilege, the plaintiffs should be at liberty to proceed to judgment and execution upon the rising of Parliament.

[1] 1 Com. J. 304.
[2] 1620; Ib. 525.
[3] Prynne's 4th Register, 810. 1 Com. J. 861. 1 Hatsell, 184, 185.
[4] 1 Com. J. 378. 421. 595, &c.; 10 Ib. 280. 300. 596; 11 Ib. 557, &c.

Soon afterwards, it was enacted, by the 2 & 3 Anne, c. 18, that no action, suit, process, proceeding, judgment, or execution, against privileged persons, employed in the revenue, or any office of public trust, for any forfeiture, penalty, &c. should be stayed or delayed by or under colour or pretence of privilege of Parliament. The Act of William III. had extended only to the principal courts of law and equity: but by the 11 Geo. II. c. 24, all actions in relation to real and personal property were allowed to be commenced and prosecuted in the recess and during adjournments of more than fourteen days, in any court of record.

Still more important limitations of the privilege were effected by the Act 10 Geo. III. c. 50. The preamble of that Act states, that the previous laws were insufficient to obviate the inconveniences arising from the delay of suits by reason of privilege of Parliament; and it is therefore enacted that,

"Any person may at any time commence and prosecute any action or suit in any court of record, or court of equity, or of admiralty; and in all causes, matrimonial and testamentary, against any peer or lord of Parliament of Great Britain,[1] or against any of the knights, citizens, or burgesses, &c. for the time being, or against any of their menial, or any other servants, or any other person entitled to the privilege of Parliament: and no such action, suit, or any other process or proceeding thereupon, shall at any time be impeached, stayed, or delayed, by or under any colour or pretence of any privilege of Parliament."

"Sect. 2. But nothing in this Act shall extend to subject the person of any of the knights, citizens, and burgesses for the time being, to be arrested or imprisoned upon any such suit or proceeding."

Stringent modes of enforcing the processes of the courts were enacted by this Act, and still further facilities were given to plaintiffs by the 45 Geo. III. c. 124, and the 47 Geo. III. sess. 2, c. 40. Under these Acts members of Parliament may be coerced by every legal process, except the attachment of their bodies.[2] By the Bankruptcy Act, 1869, persons having

[1] The 4th Article of the Act of Union extends all privileges of English peers to the peers of Ireland.

[2] It has been doubted whether a writ of summons to appear in a civil action can be served upon a member

privilege of Parliament are subject to the processes of the Court.[1]

Subpœnas and juries.

The claim to resist subpœnas was founded upon the same principle as other personal privileges, viz., the paramount right of Parliament to the attendance and service of its members. Yet it does not appear to have been maintained in early times. In 1554, a complaint was made by the Lords that Mr. Beamond, a member of the Commons, had caused a subpœna to be served upon the Earl of Huntingdon; to which the Commons returned an answer, "that they take this writ to be no breach of privilege."[2] Yet, in 1557, on a complaint being made that Mr. T. Eyms, a member of the Commons, had been served with a subpœna, two members were sent to the chancellor, to require that the process might be revoked;[3] and, again, in the case of Richard Cook, in 1584, three members were sent to the Court of Chancery, to signify to the chancellor and master of the rolls that, by the ancient liberties of this house, the members of the same are privileged from being served with subpœnas, "and to desire that they will allow the like privileges for other members of this house, to be signified to them in writing under Mr. Speaker's hand." But the chancellor replied, that "he thought the house had no such liberty of privilege for subpœnas." A committee was then appointed to search for precedents, but made no report.[4] Immediately afterwards, the house punished a person who had served a member with a subpœna.[5] Various

within the precincts of the houses of Parliament; but as it is only a process upon such action, it would appear to be warranted by the statutes cited above. But "no arrest can be made in the king's presence, nor within the verge of the Palace of Westminster, nor in any palace where he resides, nor in any place where the king's justices are sitting." 3rd Inst. 148.

[1] Before that Act came into operation it was adjudged, that a peer was liable to be made a bankrupt, under the Act of 1861; *Ex parte* Morris, *re* The Duke of Newcastle: Lord Justice Giffard, 20th Nov. 1869, affirmed by the House of Lords, upon appeal, on the 7th July 1870. 102 Lords' J. 397.

[2] 1 Com. J. 34.

[3] Ib. 48. 1 Parl. Hist. 630.

[4] D'Ewes, 347. 1 Hatsell, 96, 97.

[5] 1 Hatsell, 97.

other cases subsequently occurred, in which the parties who had served subpœnas upon members of both houses were committed, or otherwise punished for their contempt;[1] but, of late years, so far from withholding the attendance of members as witnesses in courts of justice, the Commons have frequently granted leave of absence to their members on the express ground that they had been summoned as witnesses,[2] and have even admitted the same excuse for defaulters at calls of the house.[3] But although this claim of privilege is not now enforced as regards other courts, one house will not permit its members to be summoned by the other, without a message desiring his attendance, nor without the consent of the member whose attendance is required; and it may be doubtful whether the house would not protect a member served with a subpœna, from the legal consequences of non-attendance in a court of justice, if permission had not been previously granted by the house for his attendance.[4] No officer of either house should be served with a subpœna to give evidence concerning any proceedings in Parliament, or to produce documents in his custody, until leave has been given to him to attend.[5]

Members summoned as jurors.

As the withdrawal of a witness may affect the administration of justice, the privilege has very properly been waived: but the service of members upon juries not being absolutely necessary, their more immediate duties in Parliament are held to supersede the obligation of attendance in other courts. The privilege is of great antiquity: the tenure *per baroniam* having conferred an exemption from serving on juries, not only upon those summoned to Parliament, but also upon all tenants *per baroniam*.[6]

[1] 1 Hatsell, 169. 175. 3 Lords' J. 630. 1 Com. J. 203. 205. 211. 368. 1040, &c.; 9 Ib. 339.

[2] 56 Com. J. 122; 68 Ib. 218. 243. 292; 71 Ib. 110; 82 Ib. 306. 379. See also Hans. Deb. 1st March 1844 (Earl of Devon).

[3] 48 Com. J. 318.

[4] 78 Ib. 132.

[5] 91 Lords' J. 508; 92 Ib. 590. 103 Com. J. 40; 106 Ib. 277, &c.; but see *infra*, p. 185.

[6] 1 West, Inq. 28.

The first complaint of a member being summoned on a jury, appears to have been made on the 22nd November 1597, in the case of Sir J. Tracy. In that case the serjeant was immediately sent with the mace to call Sir J. Tracy to his attendance in the house, who shortly returned accordingly.[1] Another case occurred in 1607, in which it was ordered that two members, retained as jurors by the sheriff, should be spared their attendance, and the serjeant-at-arms was sent with his mace to deliver the pleasure of the house to the secondary of the King's Bench, the court then sitting.[2] On the 15th May 1628, it was determined that Sir W. Alford should have privilege not to serve, and a letter was ordered "to be written by Mr. Speaker to the judges, that he be not amerced for his non-appearance."[3] Lord Hardwicke is said to have fined the member for Shoreham for not attending as a juror, Parliament not being then sitting: but admitted the exemption during the sitting of Parliament.[4] On the 20th February 1826, Mr. Holford complained that he had been fined for non-attendance as a juryman by the Court of Exchequer, his excuse that he was attending the service of Parliament, not being admitted; and Mr. Ellice, another member, stated that he had also been fined for non-attendance, in the same court:[5] but these cases obviously arose from misinformation on the part of the court. A committee of privileges was immediately appointed, and the house, on receiving its report, resolved, *nem. con.*, that it is "amongst the most ancient and undoubted privileges of Parliament, that no member shall be withdrawn from his attendance on his duty in Parliament to attend on any other court."[6] Before this committee had reported, another member, Mr. Bennet, having been summoned as a juror, asked the advice of the Speaker, who stated "his answer would be, that, conceiving

[1] D'Ewes, 560. 1 Hatsell, 112.
[2] 1 Com. J. 369.
[3] Ib. 898.
[4] 14 Hans. Deb. N. S. 569.
[5] Ib.
[6] 81 Com. J. 82. 87. 14 Hans. Deb. N. S. 568. 642.

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his duty to that house was his first obligation, he should perform it, he would not say neglecting every other duty, for that would imply a fault, but omitting all others which would clash therewith."[1] On the 12th June 1829, Mr. Macleod complained that he had been summoned as a juror, during an adjournment of the house, but had declined to attend. The Speaker said, "it was clear that members of that house were not liable to be called upon to serve on juries, during the sitting of Parliament. The next point to be considered was, whether an adjournment of the house was to be looked upon as a sitting, so far as the question of privilege was concerned; and he believed it was admitted by every member that it was so considered."[2] To this it may be added, that in the last clause of the Act of 1825, for consolidating the laws relating to jurors and juries,[3] there was an express reservation that nothing shall "abridge or affect any privilege of Parliament;" and further, this privilege has been fully recognised by the courts. In the case of Viscount Enfield, 6th February 1861, Chief Justice Erle stated, that "his lordship ought not to have been summoned as a juror, as members were not bound to serve in any other court than that in which they had been returned to serve, viz., the high court of Parliament, which was the highest court of the realm." And in later cases, where members have been inadvertently summoned, their privilege has been promptly acknowledged. Exemption was not ordinarily claimed by members after a prorogation; and there was no distinct authority for its existence at that time: but by the Juries Act, 1870, peers and members of Parliament are included among the persons exempted from serving on juries, without reference to the sitting of Parliament; and their privilege has since become a legal exemption.

Criminal commitments.

The privilege of freedom from arrest has always been limited to civil causes, and has not been allowed to interfere

[1] 14 Hans. Deb. 2nd Ser. 643. [2] 21 Hans. Deb. N. S. 1770.
[3] 6 Geo. IV. c. 50.

with the administration of criminal justice. In Larke's case,[1] in 1429, the privilege was claimed, "except for treason, felony, or breach of the peace;" and in Thorpe's case,[2] the judges made exceptions to such cases as be "for treason, or felony, or surety of the peace." The privilege was thus explained by a resolution of the Lords, 18th April 1626: "That the privilege of this House is, that no peer of Parliament, sitting the Parliament, is to be imprisoned or restrained, without sentence or order of the House, unless it be for treason or felony, or for refusing to give surety of the peace;"[3] and again, by a resolution of the Commons, 20th May 1675, "that by the laws and usage of Parliament, privilege of Parliament belongs to every member of the House of Commons, in all cases except treason, felony, and breach of the peace."

It was stated by the Commons, at a conference, on the 17th August 1641:

"1. That no privilege is allowable in case of peace betwixt private men, much more in case of the peace of the kingdom. 2. That privilege cannot be pleaded against an indictment for anything done out of Parliament, because all indictments are 'contra pacem domini regis.' 3. Privilege of Parliament is granted in regard of the service of the Commonwealth, and is not to be used to the danger of the Commonwealth. 4. That all privilege of Parliament is in the power of Parliament, and is a restraint to the proceedings of other inferior courts, but is no restraint to the proceedings of Parliament, and, therefore, seeing it may, without injustice, be denied, this being the case of the Commonwealth, they conceive it ought not to be granted."[4]

On the 14th April 1697, it was resolved, "That no member of this house has any privilege in case of breach of the peace, or forcible entries, or forcible detainers."[5]

Seditious libels.

In Wilkes' case, 29th November 1763, although the Court of Common Pleas had decided otherwise,[6] it was resolved by both houses,

"That privilege of Parliament does not extend to the case of writing

[1] 4 Rot. Parl. 357.
[2] 5 Ib. 339.
[3] 3 Lords' J. 562.
[4] 2 Com. J. 261. 4 Lords' J. 369.
[5] 11 Com. J. 784.
[6] 2 Wils. Rep. 150. 19 St. Tr. 981.

and publishing seditious libels, nor ought to be allowed to obstruct the ordinary course of laws in the speedy and effectual prosecution of so heinous and dangerous an offence."[1]

"Since that time," said the committee of privileges, in 1831, "it has been considered as established generally, that privilege is not claimable for any indictable offence."[2]

Case of Lord Cochrane.

These being the general declarations of the law of Parliament, one case will be sufficient to show how little protection is practically afforded by privilege, in criminal offences. In 1815, Lord Cochrane, a member, having been indicted and convicted of a conspiracy, was committed by the Court of King's Bench to the King's Bench Prison. Lord Cochrane escaped, and was arrested by the marshal, whilst he was sitting on the privy councillor's bench, in the House of Commons, on the right hand of the chair, at which time there was no member present, prayers not having been read. The case was referred to the committee of privileges, who reported that it was "entirely of a novel nature, and that the privileges of Parliament did not appear to have been violated, so as to call for the interposition of the House, by any proceedings against the marshal of the King's Bench."[3]

Causes of commitment to be communicated.

Thus the house will not allow even the sanctuary of its walls to protect a member from the process of criminal law. But in all cases in which members are arrested on criminal charges, the house must be informed of the cause for which they are detained from their service in Parliament. Several Acts which have suspended for a time the Habeas Corpus Act, have contained provisions to the effect that no member of Parliament shall be imprisoned during the sitting of Parliament, until the matter of which he stands suspected shall be *first* communicated to the house of which he shall be a

[1] 29 Com. J. 689. 15 Parl. Hist. 1362–1378.

[2] Sess. Paper, 1831 (114). See also case of Lord Oliphant, in 1709; 19 Lords' J. 31. 34; and 26 Ib. 492 (Gaming-houses).

[3] Sess. Paper, 1814–15 (239). 30 Hans. Deb. 1st Ser. 309. 336. Lord Colchester's Diary, ii. 534–536.

member, and the consent of the said house obtained for his commitment.[1] By the Protection of Person and Property Act, 1881, it was provided that "if any member of either House of Parliament be arrested under this Act, the fact shall be immediately communicated to the house of which he is a member, if Parliament be sitting at the time, or if Parliament be not sitting, then immediately after Parliament reassembles, in like manner as if he were arrested on a criminal charge." And the arrests of members, under this Act, were communicated to the House of Commons accordingly.[2] In cases not affected by Acts of this special character, it has been usual to communicate the cause of commitment, after the arrest, as in the cases of Lord George Gordon in 1780,[3] and Mr. Smith O'Brien in 1848,[4] for high treason; and whenever members have been in custody in order to be tried by naval or military courts martial,[5] or have been committed for any criminal offence by a court[6] or magistrate.[7]

Bankrupts.

The same distinction between civil and criminal processes has been observed in the case of bankrupts. By the Bankrupt Law Consolidation Act, 1849, s. 66, it was enacted that "If any trader having privilege of Parliament shall commit any act of bankruptcy, he may be dealt with under the Act in like manner as any other trader: but such person shall not be subject to be arrested or imprisoned during the term of such privilege, except in cases made felonies and misdemeanors by this Act."[8] By the Bankruptcy Act, 1869,

[1] See 17 Geo. II. c. 6. 45 Geo. III. c. 4, s. 2. 57 Geo. III. c. 3, s. 4. 57 Geo. III. c. 55, s. 4. 3 Geo. IV. c. 2, s. 4.

[2] Mr. Dillon, 4th May 1881; 136 Com. J. 213; 260 Hans. Deb. 3rd Ser. 1744. Mr. Parnell, Mr. Sexton, Mr. O'Kelly, and Mr. Dillon, also the release of Mr. Sexton, 7th Feb. 1882. A motion for a committee of inquiry was negatived. 137 Com. J. 8; 266 Hans. Deb. 3rd Ser. 98.

[3] 37 Com. J. 903.

[4] 103 Ib. 888.

[5] 37 Ib. 57. 39 Ib. 479. 51 Ib. 139. 557. 58 Ib. 597. 59 Ib. 33. 67 Ib. 246, &c. 70 Ib. 70. 47 Lords' J. 349 (Lord Gambier); and see case of Lord Torrington, 14 Ib. 521. 523. 525. 527.

[6] Mr. Healy, 15th Feb. 1883. A motion for a committee of inquiry was negatived.

[7] Mr. F. O'Connor, 107 Com. J. 28.

[8] 12 & 13 Vict. c. 106.

s. 120, a person having privilege of Parliament is to be dealt with as if he had not such privilege.

Commitment of members for contempt.

Another description of offence, partaking of a criminal character, is a contempt of a court of justice; and it was for some time doubtful how far privilege would extend to the protection of a member committed for a contempt. On the 30th June 1572, a complaint was made to the Lords by Henry Lord Cromwell, that his person had been attached by the sheriff of Norfolk, by a writ of attachment from the Court of Chancery, for not obeying an injunction of that court, "contrary to the ancient privileges and immunities, time out of mind, unto the Lords of Parliament and peers of this realm, in such cases used and allowed." The Lords, after examining this case in the presence of the judges and others of the queen's learned counsel, agreed that "the attachment did not appear to be warranted by the common law or custom of the realm, or by any statute law, or by precedents of the Court of Chancery," and they ordered Lord Cromwell to be discharged of the attachment. They were, however, very cautious in giving a general opinion, and declared that if at any future time cause should be shown that by the queen's prerogative, or by common law or custom, or by any statute or precedents, the persons of Lords of Parliament are attachable, the order in this case should not affect their decision in judging according to the cause shown.[1] Prynne, in reference to this case, lays it down that the persons of peers would only be attachable in cases of breach of the peace and contempts with force, when there would be a fine to the king.[2]

Case of Lord Cromwell.

This precedent was adopted and confirmed by the Lords on the 10th February 1628. It had been referred to the committee of privileges to inquire "whether a serjeant-at-arms may arrest the person of a peer (out of privilege of Parliament) upon a contempt of a decree in the Chancery."

[1] 1 Lords' J. 727.

[2] 4th Reg. 792.

The committee reported that no case of attachment had occurred before that of Lord Cromwell, and that "the Lords of Parliament ought to enjoy their ancient and due privileges, and their persons to be free from such attachments, with the same proviso as in the case of Lord Cromwell;" to which the Lords generally assented.[1] But on the 22nd October 1667, a report of the committee of privileges, containing the same proviso, was confirmed by the house, leaving out the proviso.[2]

Mr. Brereton.

In 1605, in the case of Mr. Brereton, who had been committed by the Court of King's Bench for a contempt, the Commons brought up their member by a writ of habeas corpus, and received him in the house.[3] The case of Sir W. Bampfield, in 1614, throws very little light upon the matter, as, after he had been brought in by writ of habeas corpus, the Speaker desired to know the pleasure of the house: but no resolution or order appears to have been afterwards agreed to.[4] On the 8th February 1620, a complaint was made, in the Commons, that two of the members' pages had been punished for misbehaviour in the Court of King's Bench. It was stated, however, that the judges had sent one of the offenders to be punished by the house, and would send the other when he could be found; "and yet, but for respect of this house, they would have indicted them for stroke in face of the court; and many for less offences have lost their hands."[5]

Lord Vaux.

On the 9th February 1625, the Lord Vaux claimed his privilege, for stay of the proceedings in an information against him in the Star Chamber; and it was granted;[6] and

Earl of Arundel.

shortly afterwards, in the case of the Earl of Arundel, the Lords' committee maintained that "though a lord, at the suit of the king, be sued in the Star Chamber *for a contempt*, yet the suit is to be stayed, by privilege of Parlia-

[1] 4 Lords' J. 27.
[2] 12 Ib. 122.
[3] 1 Com. J. 269.
[4] Ib. 466.
[5] Ib. 513.
[6] 3 Lords' J. 496.

ment, in Parliament time."[1] But on the 8th June 1757, it was "ordered and declared by the Lords, that no peer or lord of Parliament hath privilege of peerage, or of Parliament, against being compelled, by process of the courts of Westminster Hall, to pay obedience to a writ of habeas corpus directed to him," and that this be a Standing Order.[2] And it was decided, in the case of Earl Ferrers, that an attachment may be granted, if a peer refuses obedience to the writ.[3]

Mr. Long Wellesley.

In more recent cases, members committed by courts for open contempt, have failed in obtaining their release by virtue of privilege. In 1831, Mr. Long Wellesley, a member, having confessed in the Court of Chancery, that he had taken his infant daughter, a ward in chancery, out of the jurisdiction of the court, Lord Brougham, C., at once committed him for contempt, saying,—

"It is no violation of the privileges of Parliament if the members of Parliament have violated the rights and privileges of this court, which is of as high a dominion, and as undisputed a jurisdiction, as the High Court of Parliament itself; it is no breach of, but a compliance with, their privileges, that a member of either house of Parliament, breaking the rules of this court, and breaking the law of the land by a contempt committed against this court, should stand committed for that contempt."

The lord chancellor acquainted the Speaker of this commitment; and Mr. Wellesley also appealed, through the Speaker, to the House of Commons, and claimed his privilege.

[1] 3 Lords' J. 558 (Report of Precedents), 562, &c.

[2] 29 Ib. 181.

[3] Burr. 631. It is said in Bacon's Abridgment (vol. 6, p. 546), "Also peers of the realm are punishable by attachment for contempts in many instances: as for rescuing a person arrested by due course of law; for proceeding in a cause against the king's writ of prohibition; for disobeying other writs wherein the king's prerogative, or the liberty of the subject, is nearly concerned; and for other contempts which are of an enormous nature."—2 Hawk. P. C., c. 22, s. 33; 1 Burr. 634. "But the courts will not grant an attachment against a peer or member of Parliament for non-payment of money according to award."—7 Term Rep. 171. 448. And see *dicta* of Lord Brougham, in Westmeath *v.* Westmeath, 8 Law Journ. (1st Series, Chancery), 177.

His case was referred to the committee of privileges, who reported, "that his claim to be discharged from imprisonment, by reason of privilege of Parliament, ought not to be admitted." [1]

Mr. Lechmere Charlton.

The next case was that of Mr. Lechmere Charlton, in 1837. That member had been committed by the lord chancellor, for a contempt, in writing a letter to one of the masters in chancery, "containing matter scandalous with respect to him, and an attempt improperly to influence his decision." The lord chancellor stated the grounds of this commitment, in a letter to the Speaker, to whom Mr. Charlton also complained of his commitment; and these letters were referred to a committee of privileges. As the lord chancellor's order did not set forth the obnoxious letter, the committee directed it to be produced, as they considered,

"That although the lord chancellor had the power to declare what he deemed to be a contempt of the High Court of Chancery, it was necessary that the House of Commons, as the sole and exclusive judge of its own privileges, should be informed of the particulars of the contempt before they could decide whether the contempt was of such a character as would justify the imprisonment of a member."

After inquiring fully into the nature of the contempt, the committee reported, that Mr. Charlton's claim to be discharged from imprisonment ought not to be admitted.[2]

Mr. Whalley.

The case of Mr. Whalley in 1874, was, in some respects, exceptional. On the 23rd January, he was committed by the Court of Queen's Bench for a contempt, Parliament not then being sitting. On the 26th, Parliament was dissolved, and, in the meantime, Mr. Whalley had been discharged from custody. Doubts were raised whether, under these circumstances, it was necessary for the court to communicate this commitment to the house; but, on the meeting of the new Parliament, the Lord Chief Justice addressed a letter to the Speaker, explaining all the facts of the case. A committee

[1] 86 Com. J. 701.

[2] 92 Ib. 3 *et seq.*; 1 Parl. Rep. 1837, No. 45.

on privilege, to whom this letter was referred, reported that it did not demand the further attention of the house, and they also expressed their opinion "that the Lord Chief Justice fulfilled his duty in informing the house that a member of the House of Commons had been imprisoned by the Court of Queen's Bench."[1]

Mr. Gray's case.

On the 17th August 1882, Mr. Speaker acquainted the house that he had received a letter from Mr. Justice Lawson, sitting under a commission in Dublin, informing him that he had committed Mr. Gray, a member, for contempt of court, in publishing certain articles, calculated to prejudice the administration of justice. As the house was on the eve of a long adjournment, no further action was taken: but on the next meeting of the house, on the 24th October, a select committee was appointed to consider the matter. Meanwhile Mr. Gray had been discharged; and his discharge was communicated to the house. The committee, having examined Mr. Gray and other witnesses, and considered various documents, reported, in the terms of former committees, that the matters referred to them do not demand the further attention of the house.[2]

Before these last cases, the ordinary process for contempts against persons having privilege of Parliament or of peerage, had not been that of attachment of the person, but that of sequestration of the whole property, as in the case of the Countess of Shaftesbury.[3] In 1829, an order for the commitment of Lord Roscommon, for contempt, had been made by the lord chancellor, but was never executed, nor even taken out of the registrar's office. Nor must it be omitted that, so late as 1832, an Act was passed,[4] by which contempts of the ecclesiastical courts, "in face of the court, or any other contempt towards such court, or the process thereof, are

[1] Report of Committee, 1874 (77); 218 Hans. Deb. 3rd Ser. 52. 108.

[2] 137 Com. J. 487. 491; 273 Hans. Deb. 3rd Ser. 1978. 2049; 274 Ib. 34. Report of Committee on Privilege (Mr. Gray), 1882, Parl. No. 406.

[3] 2 Peere Williams, 110.

[4] 2 & 3 Will. IV. c. 93.

directed to be signified to the lord chancellor, who is to issue a writ *de contumace capiendo*, for taking into custody persons charged with such contempt," in case such person "shall not be a peer, lord of Parliament, or member of the House of Commons." It must not, therefore, be understood, that either house has waived its right to interfere when members are committed for contempt. Each case is open to consideration when it arises; and although protection has not been extended to flagrant contempts, privilege might still be allowed against commitment under any civil process, or if the circumstances of the case appeared otherwise to justify it.

Members fined for contempt of court.

In January 1873, the Court of Queen's Bench fined Mr. Onslow and Mr. Whalley, two members of the House of Commons, for a contempt of that court, when Chief Justice Cockburn took occasion to state that the court would not have been restrained by privilege from committing these members, if it had thought fit.

Contempt of court and privilege.

But it is only in cases of *quasi* criminal contempts that members of either house may be committed, without an invasion of privilege. Such a commitment, as part of a civil process for the recovery of a debt, will not be resorted to by a court, nor would it be allowed in Parliament.

On the 24th March 1880, application was made to Vice-Chancellor Hall for an order for the committal of Mr. Fortescue Harrison, a member, for contempt, in not having complied with an order of the court for payment of certain moneys, and the delivery of documents to the liquidator of a company. The vice-chancellor, however, held that privilege protected a member, except in cases of a gross character, and that the contempt, in this case, was not such as to justify the court in committing a member. On that same day Parliament was dissolved, and Mr. Fortescue Harrison did not seek re-election. On the 15th April, application was again made to the court for his commitment; but the vice-chancellor held that privilege extended to a period of forty days after a prorogation or dissolution of

Parliament, and as that time had not yet expired, he refused to entertain the motion, on the ground of privilege, and without reference to the merits of the case.[1] A similar case affecting a peer had been decided, after full consideration, by the judge of the Brompton County Court, in 1879.

Privilege of witnesses, suitors, and others.

As yet the personal privilege of members, and the ancient privilege of their servants, have alone been noticed. These were founded upon the necessity of enabling members freely to attend to their duties in Parliament. Upon the same ground, a similar privilege of freedom from arrest and molestation is attached to all witnesses summoned to attend before either house of Parliament, or before parliamentary committees, and to others in personal attendance upon the business of Parliament, in coming, staying and returning; and to officers of either house, in immediate attendance upon the service of Parliament.[2] In the early Journals there are numerous orders that all persons attending in obedience to the orders of the house, and of committees, shall have the privilege or protection of the house.[3] A few precedents will serve to explain the nature and extent of this privilege.

Their freedom from arrest.

Instances of protections given by the Lords to witnesses and to parties, while their causes or bills were depending, appear very frequently on the Journals of that house.

In 1640, Sir Pierce Crosbie, sworn as a witness in Lord Strafford's cause, being threatened with arrest, was allowed privilege, "to protect him during the time that this house examine him;"[4] and many similar protections have been granted in later times.[5] In 1641, it was ordered that Sir T. Lake, who had a cause depending, should "have liberty to pass in and out unto the house, and to his counsel, solicitor, and attorney, for and during so long time only as his cause

[1] "Times," 16th April 1880, and see Reports.

[2] 1 Lex Parl. 380. 1 Hatsell, 9. 11. 172.

[3] 1 Com. J. 505. 2 Ib. 107. 9 Ib. 62. 13 Ib. 521, &c.

[4] 4 Lords' J. 143. 144.

[5] 25 Ib. 625. 27 Ib. 19.

shall be before their lordships in agitation;"[1] and many similar orders have been made in the case of other parties, who have had causes depending,[2] or bills before the house.[3]

On the 12th May 1624, the master and others of the felt-makers were ordered, by the Commons, to be enlarged from the custody of the warden of the Fleet, for the prosecution of a bill then depending, "till the same be determined by both houses."[4] On the 24th May 1626, it was ordered, "that J. Bryers shall be sent for to testify, and to have privilege for coming, staying, and returning."[5] In the same manner, privilege was extended to persons who had bills depending, on the 22nd and 29th January 1628, on the 3rd May 1701, and the 11th May 1758.[6] On the 23rd January 1640, certain persons having petitions before the grand committee on Irish affairs, were ordered "to have liberty to come and go freely to prosecute their petition, without molestation, arrest, or restraint; and that there be a stay of committing any waste upon the lands mentioned in the petition, during the dependency of the business here."[7] Numerous instances have occurred, in which witnesses, who have been arrested on their way to or from Parliament, or during their attendance there, have been discharged out of custody;[8] and the same protection is extended, not only to parties, but to their counsel and agents, in prosecuting any business in Parliament.[9] On the 2nd May 1678, Mr. J. Gardener, solicitor in the cause concerning Lyndsey Level, who had been arrested as he was coming to attend on the house, was discharged from his arrest.[10] On the 9th April 1742, complaint was made, that Mr. Gilbert Douglas, a solicitor for several bills depending in the House of Commons,

[1] 4 Lords' J. 262.
[2] Ib. 263. 289. 330. 477. 5 Ib. 476.
[3] 5 Ib. 563. 574. 653. 680. 27 Ib. 538. 28 Ib. 512.
[4] 1 Com. J. 702.
[5] Ib. 863.
[6] Ib. 921. 924. 13 Ib. 512. 28 Ib. 244.
[7] 2 Ib. 72.
[8] 8 Ib. 525. 9 Ib. 20. 366. 472. 12 Ib. 364. 610. 66 Ib. 226. 232. 90 Ib. 521.
[9] 88 Lords' J. 189; 92 Ib. 75, 76.
[10] 9 Com. J. 472.

had been arrested as he was attending the house, and he was immediately ordered to be discharged from his arrest.[1] In the same way, solicitors for bills depending in the house, were discharged from arrest, on the 30th April 1753,[2] on the 12th February, and the 22nd March 1756.[3]

On the 29th March 1756, Mr. Aubrey, who had an estate bill depending in the House of Commons, presented a petition, in which he stated that he apprehended an arrest; and it was ordered, "that the protection of the house be allowed to him during the dependence of his bill in this house."[4] The last case that need be mentioned is that of Mr. Petrie, in 1793. That gentleman was a petitioner in a controverted election, and claimed to sit for the borough of Cricklade. Having received the usual notice to attend, by himself, his counsel, or agents, he had attended the sittings of the election committee as a party in the cause; and although he had a professional agent, he had himself assisted his counsel, and furnished them with instructions before the committee. He was arrested before the committee had closed their inquiries; and on the 20th March the house, after receiving a report of precedents, ordered, *nem. con.*, that he should be discharged out of the custody of the sheriff of Middlesex.[5] This protection, in short, is the same as that given by courts of law to witnesses and others, which has even been extended to arbitrations.[6]

Protection of witnesses and others from suits and molestation.

Witnesses, petitioners, and others, being thus free from arrest while in attendance on Parliament, are further protected, by privilege, from the consequences of any statements which they may have made before either house; and any molestation, threats, or legal proceedings against them, will be treated by the house as a breach of privilege.

On the 23rd November 1696, "A complaint being made

[1] 24 Com. J. 170.
[2] 26 Ib. 797.
[3] 27 Ib. 447. 537.
[4] Ib. 548.
[5] 48 Ib. 426.
[6] Court of Q. B. in banco, Nov. 7th 1857.

that Sir George Meggott had prosecuted at law several persons for what they testified, the last session, at the committee of privileges and elections," it was referred to that committee to examine the matter of the complaint. It appeared from their report, 4th December, that Sir G. Meggott, "having thought himself injured by their evidence, did think he might lawfully have done himself right by an action; but as soon as he was better advised, he desisted, and suffered himself to be nonsuited, and had paid them their costs." Notwithstanding his submission, however, the house agreed with the committee in a resolution, that he had been guilty of a breach of privilege, and committed him to the custody of the serjeant-at-arms.[1]

On the 27th November 1696, a petition was presented from T. Kemp and other hackney coachmen, complaining that an action had been brought against them by Mr. Gee, for libel, on account of a petition which had been presented to the house from them, in the last session.[2] From the report of the committee of privileges, to whom the matter was referred, 9th February 1696, it appeared that Mr. Gee had desisted from his action when he understood it was taken notice of by the house, and offered to release the same. The house agreed with the committee in a resolution that Mr. Gee, "for prosecuting at law the hackney coachmen for petitioning this house, is guilty of a high misdemeanor and breach of privilege," and committed him to the custody of the serjeant-at-arms.[3]

On the 8th April 1697, the Lords attached T. Stone, for striking and giving opprobrious language to a witness, below the bar, who had been summoned to attend a committee, and directed the attorney-general to prosecute him for his offence.[4] On the 5th March 1710, on the report from a committee that John Hare, a soldier, was afraid of giving evidence, the Commons resolved, "that this house will pro-

[1] 11 Com. J. 591. 613.
[2] Ib. 699.
[3] Ib. 699.
[4] 16 Lords' J. 144.

ceed with the utmost severity against any person that shall threaten, or any way injure, or send away the said J. Hare, or any other person that shall give evidence to any committee of this house."[1]

On the 9th February 1715, a complaint was made that C. Medlycot, esq., had been abused and insulted, "in respect to the evidence by him given" before a committee. Mr. Tovey, the person complained of, was declared to be guilty of a breach of privilege, and was committed to the custody of the serjeant-at-arms.[2]

On the 28th February 1728, it was reported to the house, by a committee appointed to inquire into the state of the gaols, that Sir W. Rich, a prisoner in the Fleet, had been misused by the warden of the Fleet, in consequence of evidence given by the former to the committee. The house declared, *nem. con.*, that the warden was guilty of contempt, and committed him to the custody of the serjeant-at-arms.[3]

On the 10th May 1733, complaint was made that Jeremiah Dunbar, esq., had been censured by the House of Representatives of Massachusetts Bay, for evidence given by him before a committee on a Bill, upon which the house resolved, *nem. con.*, "That the presuming to call any person to account, or to pass a censure upon him, for evidence given by such person before this house, or any committee thereof, is an audacious proceeding, and a high violation of the privileges of this house."[4]

On the 12th March 1819, the house being informed that Mr. Goold, who had given his evidence at the bar, had been insulted and threatened, in consequence of such evidence, resolved, *nem. con.*, that,

"T. W. Grady having used insulting language to a witness attending this house, and having threatened him with personal violence on account of evidence already given by him, and which he may hereafter be called upon to give at the bar of the house, has been guilty

[1] 16 Com. J. 535.
[2] 18 Ib. 371.
[3] 21 Ib. 247.
[4] 22 Ib. 146.

of a high contempt, &c.," and committed him to the custody of the serjeant-at-arms.[1]

In 1819, Thomas Henton, a soldier examined before the Worcester Election Committee, was arrested by the serjeant of his regiment, in the lobby, for absenting himself from drill. There were, however, other circumstances in the case, which induced the house not to regard this as a breach of privilege.[2]

On the 2nd July 1845, Mr. Jasper Parrott complained to the house, by petition, that an action had been commenced against him in respect of evidence which he had given before a committee.[3] On the 3rd July a copy of the declaration was delivered in by Mr. Parrott's agent, and the plaintiff and his solicitors were ordered to attend on a future day.[4] On the 7th July they all attended, and having disclaimed any intention of violating the privileges of the house, and having declared that the action would be discontinued, they were severally discharged from further attendance, although the commencement of the action was declared to be a breach of privilege.[5] It is worthy of remark, that the plaintiff's solicitor stated, in a petition to the house, that the declaration had been framed upon the assumption that a witness would not be protected, by privilege, in respect of any evidence which was wilfully and maliciously false, any more than the powers of the superior courts at Westminster would be exerted to protect any witness from an indictment for perjury. The house, however, did not recognise any such analogy: but resolved to protect the witness from all proceedings against him, in respect of the evidence given by him before a committee.

In the same year, a similar case occurred in the House of Lords. Peter Taite Harbin had brought an action, by John

[1] 74 Com. J. 223.

[2] 39 Hans. Deb. 1st Ser. 1168. 1226.

[3] 100 Com. J. 672.

[4] Ib. 680.

[5] Ib. 697. 81 Hans. Deb. 3rd Ser. 1436.

Harlow, his attorney, against Thomas Baker, for false and malicious language uttered before the House of Lords, in giving evidence before a committee. On the 14th July, the plaintiff and his attorney were summoned to the bar, and on their refusal to state that the action should not be proceeded with, were both declared guilty of a breach of privilege, and committed.[1] On the following day, the prisoners submitted themselves to the house by petition, and stated that the action had been withdrawn, upon which they were brought to the bar, reprimanded by the lord chancellor, and discharged.[2]

Protection to counsel.

The privilege of protection from all molestation in respect of what they have stated professionally, is also extended to counsel. On the 21st March 1826, complaint was made that an insulting letter had been written by John Lee Wharton to Mr. Fonblanque, Q.C., in relation to a speech made by him, at the bar of the House of Lords, on the 16th March. Wharton attended, according to order, and on making a proper submission and apology, was discharged from further attendance.[3]

Mr. Fonblanque.

Statements to Parliament not actionable.

And apart from the protection afforded by privilege, it appears that statements made to Parliament in the course of its proceedings are not actionable at law. In Lake *v.* King,[4] which was an action upon the case for printing a false and scandalous petition to the committee of Parliament for grievances, it was agreed by the court, "that the exhibiting the petition to a committee of Parliament was lawful, and that no action lies for it, although the matter contained in the petition was false and scandalous, because it is in a summary course of justice, and before those who have power to examine whether it be true or false. But the question was, whether the printing and publishing of it, in the manner

[1] 82 Hans. Deb. 3rd Series, 431. See also the protest in the Lords' Journal.

[2] Ib. 494.

[3] 58 Lords' J. 128. 145.

[4] 1 Saunders' Reports, 131 b. 1 Lev. 240. 2 Keb. 361. 383. 462. 496. 659. 801. See also 2 Inst. 228, as to evidence before a jury being privileged.

alleged by the defendant in his plea," viz., by delivering printed copies to the members of the committee, "according to custom used by others in that behalf, and approved of by the members of the said committee," was justifiable or not? After this case had depended twelve terms, judgment was given in Hilary Term, 19 & 20 Charles II., for the defendant, by Hale, C. J., upon the ground, "that it was the order and course of proceedings in Parliament to print and deliver copies, whereof they ought to take judicial notice."

But are admissible in evidence.

In Rex *v.* Merceron there was an indictment against a magistrate of the county of Middlesex for misconduct in his office, in having corruptly and improperly granted licences to public-houses, which were his own property. In the course of the evidence for the prosecution, it was proposed to prove what had been said by the defendant, in the course of his examination before a committee of the House of Commons, appointed for the purpose of inquiring into the police of the metropolis. The defendant had been compelled to appear before this committee, and had, upon examination, delivered in a list of certain public-houses, with the names of the owners and other particulars. On the part of the defendant it was objected, that since this statement had been made under a compulsory process, from the House of Commons, and under the pain of incurring punishment as for a contempt of that house, the declarations were not voluntary, and could not be admitted for the purpose of criminating the defendant; but Abbott, C. J., was of opinion that the evidence was admissible.[1]

[1] 2 Starkie's Nisi Prius Cases, 366.

CHAPTER VI.

JURISDICTION OF COURTS OF LAW IN MATTERS OF PRIVILEGE.

Difficulty of the question.

THE precise jurisdiction of courts of law in matters of privilege, is one of the most difficult questions of constitutional law that has ever arisen. Upon this point the precedents of Parliament are contradictory, the opinions and decisions of judges have differed, and the most learned and experienced men of the present day are not agreed. It would, therefore, be presumptuous to define the jurisdiction of the courts, or the bounds of parliamentary privilege: but it may not be useless to explain the principles involved in the question; to cite the chief authorities, and to advert to some of the leading cases that have occurred.

Principles stated.

It has been shown already, that each House of Parliament claims to be sole and exclusive judge of its own privileges, and that the courts have repeatedly acknowledged the right of both houses to declare what is a breach of privilege, and to commit the parties offending, as for a contempt; but, although the courts will neither interfere with Parliament, in its punishment of offenders, nor assume the general right of declaring and limiting the privileges of Parliament, they are bound to administer the law of the land, and to adjudicate when breaches of that law are complained of. The jurisdiction of Parliament, and the jurisdiction of the courts, are thus liable to be brought into conflict. The House of Lords, or the House of Commons, may declare a particular act to have been justified by their order, and to be in accordance with the law of Parliament; while the courts may decline to acknowledge the right of one house to supersede, by its sole authority, the laws which have been made by the assent, or which exist with the acquiescence, of all the branches of the legislature. It is true that, in a general sense, the law of

Parliament is the law of the land: but if one law should appear to clash with the other, how are they to be reconciled? Is the declaration of one component part of Parliament to be conclusive as to the law; or are the legality of the declaration, and the jurisdiction of the house, to be measured by the general law of the land? In these questions are comprised all the difficulties attendant upon the conflicting jurisdictions of Parliament, and of the courts of law.

It is contended, on the one hand, that in determining matters of privilege the courts are to act ministerially rather than judicially, and to adjudicate in accordance with the law of Parliament, as declared by either house; while, on the other, it is maintained that, although the declaration of either house of Parliament, in matters of privilege within its own immediate jurisdiction, may not be questioned; its orders and authority cannot extend beyond its jurisdiction, and influence the decision of the courts, in the trial of causes, legally brought before them. From these opposite views it naturally follows that, in declaring its privileges, Parliament may assume to enlarge its own jurisdiction, and that the courts may have occasion to question and confine its limits.

The claim of each house of Parliament to be the sole and exclusive judge of its own privileges has always been asserted, in Parliament, upon the principles and with the limitations which were stated in the third Chapter of this Book, and is the basis of the law of Parliament.[1] This claim has been questioned in the courts of law: but before the particular cases are cited, it will be advisable to take a general view of the legal authorities which are favourable or adverse to the claim, in its fullest extent, as asserted by Parliament.

Authorities in favour of the exclusive jurisdiction of Parliament.

The earliest authority on which reliance is usually placed, in support of the claim, is the well-known answer of the judges in Thorpe's case. In the 31st Henry VI., on the Lords putting a case to the judges, whether Thomas Thorpe,

Thorpe's case.

[1] See *supra*, p. 72.

the Speaker of the Commons, then imprisoned upon judgment in the Court of Exchequer, at the suit of the Duke of York, "should be delivered from prison by virtue of the privilege of Parliament or not," the Chief Justice Fortescue, in the name of all the justices, answered:

"That they ought not to answer to that question, for it hath not been used aforetyme, that the justices should in anywise determine the privilege of this High Court of Parliament; for it is so high and so mighty in its nature, that it may make law, and that that is law it may make no law; and the determination and knowledge of that privilege belongeth to the Lords of the Parliament, and not to the justices."[1]

In regard to this case it must be observed that no legal question had come before the judges for trial, in their judicial capacity: but that, as assistants of the House of Lords, their opinion was desired upon a point of privilege which was clearly within the immediate jurisdiction of Parliament, and was awaiting its determination. Under these circumstances it was natural that the judges should be reluctant to press their own opinions, and desirous of leaving the matter to the decision of the Lords. That part of their answer which alleges that Parliament can make and unmake laws, as a reason why the judges should not determine questions of privilege, can only apply to the entire Parliament, and not to either house separately, nor even to both combined; and, consequently, it has no bearing upon the jurisdiction of Parliament, except in a legislative sense.

Sir E. Coke.

The principle of this answer was adopted and confirmed by Sir Edward Coke, who lays it down that "whatever matter arises concerning either house of Parliament, ought to be discussed and adjudged in that house to which it relates, and not elsewhere;[2] and again, that "judges ought not to give any opinion of a matter of privilege, because it is not to be decided by the common laws, but *secundum leges*

[1] 5 Rot. Parl. 240. See also Lord Ellenborough's observations upon this case, 14 East, 29.

[2] 4th Inst. 15.

et consuetudinem Parliamenti; and so the judges, in divers Parliaments, have confessed."[1]

Lord Clarendon.

These general declarations were explained and qualified by Lord Clarendon, who, in his "History of the Rebellion," thus defines the jurisdiction of the Commons:

"They are the only judges of their own privileges; that is, upon the breach of those privileges which the law hath declared to be their own, and what punishment is to be inflicted upon such breach. But there can be no privilege of which the law doth not take notice, and which is not pleadable by and at law."[2]

Lord C. J. North.

In the case of Barnardiston *v.* Soame, in 1674, Lord Chief Justice North said:

"I can see no other way to avoid consequences derogatory to the honour of the Parliament but to reject the action, and all others that shall relate either to the proceedings or privilege of Parliament, as our predecessors have done. For if we should admit general remedies in matters relating to the Parliament, we must set bounds how far they shall go, which is a dangerous province; for if we err, privilege of Parliament will be invaded, which we ought not in any way to endamage."[3] But in the same argument he alleged "that actions may be brought for giving Parliament protections wrongfully; actions may be brought against the clerk of the Parliaments, serjeant-at-arms, and Speaker, for aught I know, for executing their offices amiss, with averments of malice and damage; and then must judges and juries determine what they ought to do by their officers. This is in effect prescribing rules to the Parliament for them to act by."[4]

Mr. Justice Powell.

In the case of Paty, one of the Aylesbury men, brought up by habeas corpus, Mr. Justice Powell thus defined the jurisdiction of the courts in matters of privilege:

"This court may judge of privilege, but not contrary to the judgment of the House of Commons." Again, "This court judges of privilege only incidentally; for when an action is brought in this court, it must be given one way or other." "The court of Parliament is a superior court; and though the King's Bench have a power to prevent excesses of jurisdiction in courts, yet they cannot prevent such excesses in Parliament, because that is a superior court, and a prohibition was never moved for to the Parliament."[5]

[1] 4th Inst. 15.

[2] Clarendon's Hist. of the Rebellion, vol. ii. book iv. p. 195. 8vo. edit. Oxf.

[3] 6 Howell, St. Tr. 1110.

[4] Ib.

[5] 2 Lord Raym. 1105.

In several other cases which related solely to commitments by either house of Parliament, very decided opinions have been expressed by the judges, in favour of privilege, and adverse to the jurisdiction of the courts of law: but most of these may be taken to apply more especially to the undoubted right of commitment for contempt, rather than to general matters of law in which privilege may be concerned.[1]

Mr. Justice Blackstone.

In the case of Brass Crosby, Mr. Justice Blackstone went so far as to affirm that "it is our duty to presume the orders of that house [of Commons], *and their execution*, to be according to law;" and in Rex *v.* Wright, Lord Kenyon said, "This is a proceeding by one branch of the legislature, and therefore we cannot inquire into it:" but he added, "I do not say that cases may not be put, in which we would inquire whether the House of Commons were justified in any particular measure."

Lord Kenyon.

Hawkins.

It is laid down by Hawkins that

> "There can be no doubt but that the highest regard is to be paid to all the proceedings of either of those houses; and that wherever the contrary does not plainly and expressly appear, it shall be presumed that they act within their jurisdiction, and agreeably to the usages of Parliament, and the rules of law and justice."[2]

Lord C. B. Comyn.

And Lord Chief Baron Comyn, following the opinion of Sir Edward Coke, affirms that

> "All matters moved concerning the Peers and Commons in Parliament, ought to be determined according to the usage and customs of Parliament, and not by the law of any inferior court."[3]

Authorities in support of the jurisdiction of courts in matters of privilege.

These authorities are sufficient, for the present purpose, to show the general confirmation of the exclusive jurisdiction of Parliament, in matters of privilege: but even here the parliamentary claim is occasionally modified and limited, as in the opinions of Lord Clarendon, Chief Justice North, and Lord Kenyon. In other cases, the jurisdiction of courts of law has been more extensively urged, and the privileges of Parliament

[1] See *supra*, p. 82.

[2] 2 Pleas of the Crown, c. 15, s. 73.

[3] Digest, "Parliament" (G. 1).

proportionately limited. In Benyon *v.* Evelyn, the Lord Chief Justice, Sir Orlando Bridgman, came to the conclusion,

Sir O. Bridgman.

"That resolutions or resolves of either house of Parliament, singly, in the absence of parties concerned, are not so concludent upon courts of law, but that we may, nay (with due respect, nevertheless, had to their resolves and resolutions,) we must, give our judgment according as we upon our oath conceive the law to be, though our opinions fall out to be contrary to those resolutions or votes of either house."[1]

Lord C. J. Willes.

On another occasion Lord Chief Justice Willes said,

"I declare for myself, that I will never be bound by any determination of the House of Commons, against bringing an action at common law for a false or double return; and a party may proceed in Westminster Hall, notwithstanding any order of the house."[2]

Lord Mansfield.

Lord Mansfield, in arguing for the exclusive right of the Commons to decide upon elections, said,

"That, in his opinion, declarations of the law by either House of Parliament were always attended with bad effects: he had constantly opposed them whenever he had an opportunity; and, in his judicial capacity, thought himself bound never to pay the least regard to them:" "but he made a wide distinction between general declarations of law, and the particular decision which might be made by either house, in their judicial capacity, on a case coming regularly before them, and properly the subject of their jurisdiction."[3]

At another time the same great authority declared that "a resolution of the House of Commons, ordering a judgment to be given in a particular manner, would not be binding in the courts of Westminster Hall."[4] And in Burdett *v.* Abbot,

Lord Ellenborough.

Lord Ellenborough said, "The question in all cases would be, whether the House of Commons were a court of competent jurisdiction, for the purpose of issuing a warrant to do the act."[5]

Passing now to the most recent judicial opinions, the cases of Stockdale *v.* Hansard and Howard *v.* Gosset present themselves. An outline of all the proceedings in these cases (the

[1] Benyon *v.* Evelyn, Bridgman, 324.

[2] Wynne *v.* Middleton, 1 Wils. 128.

[3] 16 Hansard, Parl. Hist. 653.

[4] 24 Ib. 517.

[5] 14 East, 128.

most important that had arisen since that of Ashby and White), will be presently attempted: but, for the present, the expositions of the judges, in reference to the general jurisdiction of the courts, will be necessary to close this summary of authorities.

Stockdale *v.* Hansard.

In giving judgment in the former case on the 31st May 1839, Lord Denman used these words:

"But having convinced myself that the mere order of the house will not justify an act otherwise illegal, and that the simple declaration that that order is made in exercise of a privilege, does not prove the privilege; it is no longer optional with me to decline or accept the office of deciding whether this privilege exist in law. If it does, the defendant's prayer must be granted, and judgment awarded in his favour: or, if it does not, the plaintiff, under whatever disadvantage he may appear before us, has a right to obtain at our hands, as an English subject, the establishment of his lawful rights, and the means of enforcing them."[1]

In the same trial Mr. Justice Littledale argued,

"It is said the House of Commons is the sole judge of its own privileges; and so I admit, as far as proceedings in the house, and some other things, are concerned: but I do not think it follows that they have a power to declare what their privileges are, so as to preclude inquiry whether what they declare are part of their privileges. The Attorney-general admits that they are not entitled to create new privileges: but they declare this [the publication of papers] to be their privilege. But how are we to know that this is part of their privileges without inquiring into it, when no such privilege was ever declared before? We must therefore be enabled to determine whether it be part of their privileges or not."[2]

To this argument, however, it is an obvious answer that, assuming the house to be the judge of its own privileges, it is its province to determine whether a privilege be new or not, from an examination of the Journals and other authorities. The learned judge said further:

"I think that the mere statement that the act complained of was done by the authority of the House of Commons is not of itself, without more, sufficient to call at once for the judgment of the court for the defendant."[3]

[1] Proceedings, printed by the Commons, 1839 (283), p. 155.

[2] Ib. pp. 161, 162.

[3] Ib. p. 162.

Mr. Justice Patteson thus expressed his opinion:

"If the orders (of the House of Commons) be illegal, and not merely erroneous, upon no principle known to the laws of this country, can those who carry them into effect justify under them. A servant cannot shelter himself under the illegal orders of his master, nor could an officer under the illegal orders of a magistrate, until the legislature interposed and enabled him to do so. The mere circumstance, therefore, that the act complained of was done under the order and authority of the House of Commons, cannot of itself excuse the act, if it be in its nature illegal; and it is necessary, in answer to an action for the commission of such illegal act, to show, not only the authority under which it was done, but the power and right of the House of Commons to give such authority."[1]

And upon the question of jurisdiction he laid it down,

"That every court in which an action is brought upon a subject matter generally and *primâ facie* within its jurisdiction, and in which, by the course of the proceedings in that action, the powers and privileges and jurisdiction of another court come into question, must of necessity determine as to the extent of those powers, privileges, and jurisdiction; and the decisions of that court, whose powers, privileges, and jurisdiction are so brought into question as to their extent, are authorities, and, if I may so say, evidences in law upon the subject, but not conclusive,"[2]

In conclusion, Mr. Justice Coleridge thus summed up his view of the duties of a court of law:

"The cause is before us; we are sworn to decide it according to our notions of the law; we do not bring it here, and being here, a necessity is laid upon us to deliver judgment; that judgment we can receive at the dictation of no power; we may decide the cause erroneously, but we cannot be guilty of any contempt in deciding it according to our consciences."[3]

Howard *v.* Gosset.

In the case of Howard *v.* Gosset, Mr. Justice Coleridge again expressed his opinion as to the powers of a court of law in matters of privilege:

"It is enough to say that the law is supreme over the House of Commons, and over the Crown itself. If the limits of the law be passed by either, for most satisfactory reasons, they are indeed themselves irresponsible, but the law will require a strict account of th

[1] Proceedings, printed by the Commons, 1839 (283), p. 169.

[2] Ib. p. 174.

[3] Ib. p. 188.

acts of all persons and their agents; and these, according to the nature of the illegality, will be answerable civilly or criminally."[1]

Judgments adverse to claims of privilege.

With these conflicting opinions as to the limits of parliamentary privilege, and the jurisdiction of courts of law, if either House of Parliament insist upon precluding other courts from inquiring into matters which are held to be within its own jurisdiction, the proper mode of effecting that object, is the next point to be determined. If the courts were willing to adopt the resolutions of the house as their guide, the course would be clear. The authority and adjudication of the house would be pleaded, and the courts, acting ministerially, would at once give effect to them. But if the courts regard a question of privilege as any other point of law, and assume to define the jurisdiction of the house,—in what manner, and at what point, can their adverse judgments be prevented, overruled, or resisted? The several modes that have been attempted, will appear from the following cases: but it must be premised that when a privilege of the Commons is disputed, that house labours under a peculiar embarrassment. If the courts admit the privilege, their decisions are liable to be reversed by the House of Lords; and thus, contrary to the law of Parliament, one house would be constituted a judge of the privileges claimed by the other. And if the privilege be denied by the courts, the house has no other remedy, in the ordinary courts of law, but an ultimate appeal to the House of Lords. It is difficult to determine which alternative is the least satisfactory—the denial of a privilege by the Lords on a writ of error, or an application to them for redress, when the authority of the house has been discredited by an inferior tribunal. With these perplexities before them, it is not surprising that the Commons should frequently have viewed all legal proceedings, in derogation of their authority, as a breach of privilege and contempt. They have restrained

[1] Arguments and Judgment, as printed by the House of Commons, 1845 (305), p. 105.

suitors and their counsel by prohibition and punishment, they have imprisoned the judges, they have coerced the sheriff: but still the law has taken its course.

Having opened the principles of the controversy respecting parliamentary jurisdiction, it is time to proceed with a narrative of the most important cases in which the privileges of Parliament have been called in question.

Case of Sir W. Williams.

Sir William Williams, Speaker of the House of Commons, in the reigns of Charles II. and James II., had printed and published, by order of the house, a paper well known in the histories of that time as Dangerfield's Narrative. This paper contained reflections upon the Duke of York, afterwards James II., and an information for libel was filed against the Speaker, by the Attorney-General, in 1684. He pleaded to the jurisdiction of the Court, that as the paper had been signed by him, as Speaker, by order of the House of Commons, the Court of King's Bench had no jurisdiction over the matter. On demurrer, this plea was overruled, and a plea in bar was afterwards made, but withdrawn; his plea, that the order of the house was a justification, was set aside by the court, without argument, as "an idle and insignificant plea;" and he was fined 10,000*l.* Two thousand pounds of this fine were remitted by the King, but the rest he was obliged to pay. The Commons were indignant at this contempt of their authority, and declared the judgment to be an illegal judgment and against the freedom of Parliament.[1] It was also included in the general condemnation by the Bill of Rights, of "prosecutions in the Court of King's Bench for matters and causes cognisable only in Parliament."[2] Three bills were brought in, in 1689, in 1690, and in 1695, to reverse this judgment: but they all miscarried, chiefly, it is understood, because it was proposed to indemnify the Speaker out of the estate of Sir Robert Sawyer, who had filed the information as Attorney-General.[3]

[1] 12th July 1689, 10 Com. J. 215.

[2] See 10 Com. J. 146. 177.

[3] 2 Shower, 471. 13 Howell, St. Tr. 1370. Wynn's Argument. 10 Com. J. 177. 205.

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The next important case is that of Jay *v.* Topham, in 1689. After a dissolution of Parliament, an action was brought in the Court of King's Bench against John Topham, Esq., serjeant-at-arms, for executing the orders of the house in arresting certain persons. Mr. Topham pleaded to the jurisdiction of the court the said orders: but his plea was overruled, and judgment given against him. The house declared this judgment to be a breach of privilege, and committed Sir F. Pemberton and Sir T. Jones, who had been the judges in the cause, to the custody of the serjeant-at-arms.[1] Jay *v.* Topham.

They had protested, in their examination, that they had not questioned the legality of the orders of the house, but had overruled, on technical grounds, the plea to the jurisdiction. They averred also, that if there had been a plea in bar, the defendant would have been entitled to a judgment.[2] Assuming the truth of their statements, it has been generally acknowledged that these proceedings against the judges were liable to great objection. Lord Ellenborough said, that it was surprising "how a judge should have been questioned, and committed to prison by the House of Commons, for having given a judgment which no other judge who ever sat in his place could have differed from." And Lord Denman, in Stockdale *v.* Hansard, said that this judgment was righteous, and that the judges "vindicated their conduct by unanswerable reasoning;"[3] and again, in Howard *v.* Gosset, he called the commitment of these judges "a flagrant abuse of privilege:" but, on the other hand, Lord Campbell has pointed out that there had been a plea in bar, which had been overruled, as stated in the petition of Topham to the House of Commons,[4] and that the authority of that house had, in fact, been questioned by the judges.[5]

[1] 10 Com. J. 227.

[2] 12 Howell, St. Tr. 829. 831.

[3] Shorthand writer's notes, 1839 (283), 149.

[4] 10 Com. J. 104.

[5] Shorthand writer's notes of argument in Stockdale *v.* Hansard, 76. 2 Lives of the Ch. Justices, 57. 2 Nelson's Abridg. 1248.

Ashby and White.

The remarkable cases of Ashby and White, and the Aylesbury men, in 1704, are next worthy of a passing notice. They have been already alluded to in the second Chapter, with reference to the right of determining elections:[1] but they must again be brought forward, to point out the course adopted by the Commons, to stay actions derogatory to their privileges. Enraged by a judgment of the House of Lords, which held that electors had a right to bring actions against returning officers, touching their right of voting, the Commons declared that such an action was a breach of privilege; "and that whoever shall presume to commence any action, and all attorneys, solicitors, counsellors, and serjeants-at-law, soliciting, prosecuting, or pleading in any case, are guilty of a high breach of the privileges of this house." In spite of this declaration, five burgesses of Aylesbury, commonly known as "the Aylesbury men," commenced actions against the constables of their borough, for not allowing their votes. The House of Commons obtained copies of the declarations, and resolved that the parties were "guilty of commencing and prosecuting actions," "contrary to the declaration, in high contempt of the jurisdiction, and in breach of the known privileges, of this house:"[2] for which offence, the parties and their attorney were committed to Newgate.[3] Thence they endeavoured to obtain their release by writs of habeas corpus, but without success; and the counsel who had pleaded for the prisoners, on the return of the writs, were committed to the custody of the serjeant-at-arms.[4] The Lords took part with the Aylesbury men against the Commons; and after a tumultuous session, occupied with addresses, conferences, and resolutions upon privilege, the Queen prorogued the Parliament.

On this occasion, the Commons, consistently with ancient usage,[5] endeavoured to stop the actions at their commence-

[1] See *supra*, p. 59.
[2] 14 Com. J. 444.
[3] Ib. 445.
[4] Ib. 552.
[5] See *supra*, p. 145.

ment, and thus to prevent the courts from giving any judgment. But although this course of proceeding may chance to be effectual, an action cannot be legally obstructed, if the parties be determined to proceed with it. Their counsel may be prevented from pleading, but others would be immediately instructed to appear before the court; and it must not be forgotten, that during a recess, neither house could interfere with the parties or their counsel, and that judgment might be obtained and executed before the meeting of Parliament. This mode of preventing actions, however, is so natural, that it has since been resorted to; but the principle has not been uniformly asserted, and it is difficult to determine whether commencing such actions, in future, will, in any case, be regarded as a breach of privilege or not.

Burdett *v.* Abbot; Burdett *v.* Colman.

When Sir Francis Burdett brought actions against the Speaker and the serjeant-at-arms, in 1810, for taking him to the Tower in obedience to the orders of the House of Commons, they were directed to plead, and the Attorney-General received instructions to defend them.[1] A committee at the same time reported a resolution, "that the bringing these actions, for acts done in obedience to the orders of the house, is a breach of privilege," but it was not adopted by the house. The actions proceeded in the regular course, and the Court of King's Bench sustained and vindicated the authority of the house.[2] The judgment of that court was afterwards affirmed, on a writ of error, by the Exchequer Chamber,[3] and ultimately by the House of Lords.[4]

At a later period a series of cases have arisen, in which the authority of the House of Commons, and the acts of its officers, have been questioned. They have caused so much controversy, and have been so fully debated and canvassed, that nothing is needed but a succinct statement of the pro-

[1] 65 Com. J. 355. 16 Hans. Deb. 1st Ser. 915. 956. 969. Lord Colchester's Diary, ii. 263–277.

[2] 14 East, 1.

[3] 4 Taunt. 401.

[4] 5 Dow, 165.

ceedings, and a commentary upon the present position of parliamentary privilege and jurisdiction.

Printed papers; Stockdale *v.* Hansard.

Messrs. Hansard, the printers of the House of Commons, had printed, by order of that house, the reports of the inspectors of prisons, in one of which a book published by John Joseph Stockdale was described in a manner which he conceived to be libellous. He brought an action against Messrs. Hansard, during the recess in 1836, who pleaded the general issue, and proved the order of the house to print the report. This order, however, was held to be no defence to the action: but Stockdale had a verdict against him upon a plea of justification, as the jury considered the description of the work in question to be accurate. On that occasion Lord Chief Justice Denman, who tried the cause, made a declaration adverse to the privileges of the house, which Messrs. Hansard had set up as part of their defence. In his direction to the jury, his lordship said "that the fact of the House of Commons having directed Messrs. Hansard to publish all their parliamentary reports is no justification for them, or for any bookseller who publishes a parliamentary report containing a libel against any man." In consequence of these proceedings, a committee was appointed, on the meeting of Parliament in 1837, to examine precedents, and to ascertain the law and practice of Parliament in reference to the publication of papers, printed by order of the house. The result of these inquiries was the passing of the following resolutions by the house:

"That the power of publishing such of its reports, votes, and proceedings as it shall deem necessary or conducive to the public interests, is an essential incident to the constitutional functions of Parliament, more especially of this house, as the representative portion of it.

"That by the law and privilege of Parliament, this house has the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges; and that the institution or prosecution of any action, suit, or other proceeding, for the purpose of bringing them into discussion or decision before any court or tribunal elsewhere than in Parliament, is a high breach of such privilege, and renders all parties

concerned therein amenable to its just displeasure, and to the punishment consequent thereon.

"That for any court or tribunal to assume to decide upon matters of privilege inconsistent with the determination of either house of Parliament thereon, is contrary to the law of Parliament, and is a breach and contempt of the privileges of Parliament."[1]

Nothing could have been more comprehensive than these resolutions: they asserted the privilege, and denounced the parties, the counsel, and the courts who should presume to question it; yet Stockdale immediately commenced another action, and the house, instead of acting upon its resolutions, directed Messrs. Hansard to plead, and the Attorney-General to defend them.

In the former case, Messrs. Hansard had obtained judgment upon a plea which would have availed them equally if they had printed the report upon their own account, like any other bookseller: but in the second action the privileges and order of the house were alone relied upon in their defence, and the Court of Queen's Bench unanimously decided against them.

Damages paid.

Still the House of Commons was reluctant to act upon its own resolutions, and instead of punishing the plaintiff, and his legal advisers, "under the special circumstances of the case," it ordered the damages and costs to be paid. The resolutions, however, were not rescinded, and it was then determined that, in case of future actions, Messrs. Hansard should not plead at all, and that the parties should suffer for their contempt of the resolutions and authority of the house. Another action was brought by the same person, and for the publication of the same report. Messrs. Hansard did not plead, the judgment went against them by default, and the damages were assessed by a jury, in the Sheriff's Court, at 600*l.* The Sheriffs of Middlesex levied for that amount, but having been served with copies of the resolutions of the house, they were anxious to delay paying the money to

[1] 92 Com. J. 418.

Stockdale as long as possible, in order to avoid its threatened displeasure.

Commitment of the sheriffs.

At the opening of the session of Parliament in 1840, the money was still in their hands. The House of Commons at once entered on the consideration of these proceedings, which had been carried on in spite of its resolutions, and in the first place committed Stockdale to the custody of the serjeant-at-arms. The sheriffs were desired to refund the money, and, on their refusal, were also committed. Mr. Howard, the solicitor of Mr. Stockdale, was suffered to escape with a reprimand. The sheriffs retained possession of the money until an attachment was issued from the Court of Queen's Bench,[1] when they paid it over to Stockdale. Stockdale, while in prison, commenced a fourth action by the same solicitor, and with him was committed to Newgate for the offence; and Messrs. Hansard were again ordered not to plead. Once more judgment was entered up against them, and a writ of inquiry of damages issued.

Mr. France, the under-sheriff, upon whom the execution of this writ devolved, having been served with the resolutions of the Commons, expressed by petition his anxiety to pay obedience to them, and sought the protection of the house. He then obtained leave to show cause before the Court of Queen's Bench, on the fourth day of Easter term, why the writ of inquiry should not be executed.

Meanwhile the imprisonment of the plaintiff and his attorney did not prevent the prosecution of further actions. Mr. Howard's son, and his clerk, Mr. Pearce, having been concerned in conducting such actions, were committed for the contempt; and Messrs. Hansard, as before, were instructed not to plead. At length, as there appeared to be no probability of these vexatious actions being discontinued, a bill was introduced into the Commons, by which proceedings, criminal or civil, against persons for publication of any

Act for the publication of papers.

[1] 11 Adolphus & Ellis, 253.

reports, papers, votes, or proceedings published by order or under the authority of either house of Parliament, are to be stayed by the courts, upon delivery of a certificate and affidavit that such publication is by order or under the authority of either house of Parliament. An extract from, or abstract of, a parliamentary paper, published *bonâ fide* and without malice, is also protected by this act. This bill was agreed to by the Lords, and received the royal assent.[1] It has removed one ground for disputing the authority of Parliament:[2] but has left the general question of privilege and jurisdiction in the same uncertain state as before.

Howard *v.* Gosset and others.

In executing the Speaker's warrant for taking Mr. Howard into custody, the officers employed by the serjeant-at-arms, for that purpose, had remained some time in his house, during his absence, for which he brought an action of trespass against them. As it was possible that they might have exceeded their authority, and as the right of the house to commit was not directly brought into question, the defendants were, in this case, permitted to appear, and defend the action;[3] although a clause for staying further proceedings in the action was contained in the bill which was pending, at that time, in the House of Lords, where it was afterwards omitted.

This action, after some delay, proceeded to trial. On the 15th June 1842, the serjeant-at-arms informed the house that he had received a subpœna to attend the trial on the part of the defendants; and leave was given to him to attend and give evidence. At the same time the clerk of the journals, who had received a subpœna, had leave to attend and give

[1] 3 & 4 Vict. c. 9.

[2] The action of Harlow *v.* Hansard was stayed 14th July 1845, by Mr. Justice Wightman in chambers, on the production of the Speaker's certificate. In the case of Houghton and others *v.* Plimsoll, tried at Liverpool, 1st April 1874, Baron Amphlett directed the jury that the report of a Royal Commission, presented to Parliament in a printed form, came within the provisions of the Act for the publication of Parliamentary papers, "since it was a report which had been adopted by Parliament, and of which a distribution of copies had been ordered by Parliament."

[3] 95 Com. J. 236. Hans. Deb. 31st March 1840.

evidence, and to produce the journal of the house.[1] The cause was tried before Lord Denman, in the sittings after Michaelmas term, 1842, when Parliament was not sitting, and a verdict was given for the plaintiff, with 100*l.* damages.[2] This verdict, however, did not proceed upon any question of the jurisdiction of the house; but simply on the ground that the officers had exceeded their authority, by remaining in the plaintiff's house, after they were aware of his absence from home. The Attorney-General, who appeared in their defence, admitted that they were not justified in their conduct; and the case can scarcely be cited as one of privilege.

Howard's second action.

But other actions were afterwards commenced by Mr. Howard against Sir William Gosset and other officers of the house, for taking him into custody, and conveying him to Newgate, in obedience to orders of the house, and the Speaker's warrants.[3] The house gave all the defendants leave to appear and defend the actions, and directed the Attorney-General to defend them.[4] The only action that came on for trial was that against the serjeant himself: but three other actions were commenced against the officers of the house, in one of which the damages were laid at 100,000*l.*

The second action of Howard *v.* Gosset came on for trial on the 15th November 1844; and the circumstances in which it originated, and the results to which it led, may be briefly described. Mr. Howard, having expressed his regret for commencing Stockdale's third action against Messrs. Hansard, had been reprimanded by the Speaker and discharged; when he immediately commenced a fourth action. He was then ordered to attend the house forthwith: but it appeared from the evidence of the messengers, that he was wilfully evading the service of the order, and could not be found. The house, instead of resolving that he was in

[1] 97 Com. J. 378.
[2] 11 Adolphus & Ellis, 273.
[3] 98 Com. J. 59.
[4] Ib. 118. Hans. Deb. 15th March 1843.

contempt, adopted the precedent of 31st March 1771,[1] and, according to ancient custom, ordered that he should be sent for in the custody of the serjeant-at-arms,[2] and that Mr. Speaker should issue his warrant accordingly. The warrant was in the following form:

Form of warrant.

"Whereas the House of Commons have this day ordered that Thomas Burton Howard be sent for in the custody of the serjeant-at-arms attending this house: these are therefore to require you to take into your custody the body of the said Thomas Burton Howard," &c. &c.

Howard was taken into custody on this warrant, and brought to the bar; and it was for this arrest that the action of trespass was brought. Pleas were put in justifying the acts of the serjeant, under the authority of the warrant, to which there were special demurrers, denying their sufficiency in law.

Arguments and judgment.

In the argument it was contended, not only that the warrant was informal, but that the house had exceeded its jurisdiction in sending for a person in custody, without having previously adjudged him guilty of a contempt. The house might have sent for him, it was urged, and when he did not appear, have declared him in contempt, and committed him for his offence: but they had no right to bring him in custody, and thus imprison him upon a charge instead of on conviction. This doctrine, however, was not supported by the court: but judgment was given for the plaintiff on other grounds. The three judges whose opinion was for the plaintiff, each differed as to the grounds of the judgment. Mr. Justice Wightman thought the warrant technically bad, because in the mandatory part it merely directed the serjeant to take the plaintiff into custody, whereas in the recital it appeared that he was to be sent for in custody. Mr. Justice Coleridge differed upon this point, and thought the mandatory part was to be read with the recital, and thus made consistent. His main objection to the warrant was, that it did not express

[1] 21 Com. J. 705.

[2] 95 Ib. 30.

the cause for which the plaintiff was to be sent for. From this opinion, again, Lord Denman expressed his dissent; but thought the warrant otherwise bad. On the other hand, Mr. Justice Williams was of opinion that there should be judgment for the defendant. The grounds upon which the judgment was pronounced were so far technical, that the judges considered that no question of privilege was involved in their decision; and "that the form of the warrants issued by Mr. Speaker, by order of the house, may be questioned and adjudged to be bad, without impugning the authority of the house, or in any way disputing its privileges." From this doctrine a committee of the Commons[1] entirely dissented. "They could not admit the right of any court of law to decide on the propriety of those forms of warrants which the house, through its highest officer, has thought proper to adopt on any particular occasion. If the highest court of law has this right, it is impossible to deny it to the lowest." The committee, in considering the course to be adopted by the house in consequence of this judgment, thus expressed the difficulties of their situation:—

"They are not insensible to the public evil which might result from the adoption by the House of Commons of decisive measures for resisting the execution of a judgment of a court of law. They are not without apprehension that such measures may hereafter become inevitable; but they entertain a strong conviction that it would be inexpedient for the house needlessly to precipitate such a crisis; and they think that every other legitimate mode of asserting and defending its privileges should be exhausted before it resorts to the exercise of that power which it possesses, of preventing, by its own authority, the further progress of an action in which judgment has been obtained."

Writ of error.

The house concurred in the opinion of the committee, and ordered that a writ of error be brought upon the judgment of the Court of Queen's Bench.[2] In the meantime, in order to avoid "submitting to abide by the judgment of the court of error, in the event of its being adverse," the serjeant was

[1] 2nd Report on Printed Papers, 1845 (397), p. vi.

[2] 100 Com. J. 642. See also Hans. Deb. 30th May and 26th June 1845

not authorised to give bail, and execution was levied on his goods.[1] Judgment was given by the Court of Exchequer Chamber, on the writ of error, on the 2nd February 1847, when the judgment of the court below was reversed by the unanimous opinion of all the judges of whom the court was composed. They found, "that the privileges involved in this case are not in the least doubtful, and the warrant of the Speaker is, in our opinion, valid, so as to be a protection to the officer of the house."[2]

Lines *v.* Russell.

On the 19th February 1852, the serjeant-at-arms acquainted the house that he had been served with a writ and declaration, at the suit of William Lines, a witness before the St. Albans Election Committee of the previous session, whom he had taken into custody by virtue of a warrant from the chairman of that committee. The serjeant stated, that before he pleaded, he thought it necessary to make this fact known to the house.[3] On the following day the house resolved, that the serjeant have leave to plead to and defend the action.[4] He pleaded accordingly, and it was held that he was justified by the warrant.[5]

Bradlaugh *v.* Erskine.

On the 5th May 1882, the serjeant having informed the house that an action had been commenced against Mr. Erskine, the deputy serjeant, by Mr. Bradlaugh, for an assault in removing him from the lobby, the house on the 9th gave leave to Mr. Erskine to appear and plead in the action, and directed the Attorney-General to defend him.[6] In the following January, judgment was given for the defendant on demurrer, it being held by the court that the order of the house furnished a sufficient justification of anything done by the defendant under it, and within its scope,[7] and on the 20th February 1883, final judgment was given for the defendant.[8]

Present

Thus far the course adopted by the house has led, for the

[1] 100 Com. J. 562.

[2] Shorthand writer's notes, 1847 (39), p. 164. See also *supra*, p. 176.

[3] 107 Com. J. 64.

[4] Ib. 68.

[5] See *supra*, p. 86.

[6] 137 Com. J. 182. 187.

[7] "Times," 12th January 1883.

[8] Ib. 21st February 1883.

position of privilege.

present, to a fortunate termination of its contests with the courts of law; but, if any judgment had been ultimately adverse to their privileges, they would have been involved in still greater embarrassments. Later decisions of the courts encourage the hope that further contests may be remote, but it must be acknowledged that the position of privilege is, in the highest degree, unsatisfactory. Assertions of privilege are made in Parliament, and denied in the courts; the officers who execute the orders of Parliament are liable to vexatious actions; and if verdicts are obtained against them, the damages and costs are paid by the Treasury. The parties who bring such actions, instead of being prevented from proceeding with them, by some legal process acknowledged by the courts, can only be coerced by an unpopular exercise of privilege, which does not stay the actions. If Parliament were to act strictly upon its own declarations, it would be forced to commit not only the parties, but their counsel and their attorneys, the judges, and the sheriffs; and so great would be the injustice of punishing the public officers of justice for administering the law according to their consciences and oaths, that Parliament would shrink from so violent an exertion of privilege. And again, the intermediate course adopted in the case of Stockdale *v.* Hansard, of coercing the sheriff for executing the judgment of the court, and allowing the judges who gave the obnoxious judgment to pass without censure, is inconsistent in principle, and betrays hesitation on the part of the house—distrust of its own authority, or fear of public opinion.

Remedy by statute.

A remedy has already been applied to actions connected with the printing of parliamentary papers; and a well-considered statute, founded upon the same principle, is the only mode by which collisions between Parliament and the courts of law can be prevented for the future. The proper time for proposing such a measure is when no contest is pending, and when its provisions may be calmly examined, without reference to a particular privilege, or a particular judgment of the

courts. It is not desired that Parliament should, on the one hand, surrender any privilege that is essential to its dignity, and to the proper exercise of its authority; nor, on the other, that its privileges should be enlarged.[1] But some mode of enforcing them should be authorized by law, analogous to an injunction issued by a court of equity to restrain parties from proceeding with an action at common law, and even with a private bill, or an opposition to a private bill, in Parliament;[2] and such a prohibition should be made binding, not only upon the parties, but upon the courts.

[1] These views, expressed long since, receive confirmation from a letter of Lord Jeffrey, 2 Cockburn's Life, 353.

[2] Hartlepool Junction Railway Bill, 1848. See 100 Hans. Deb. 3rd Ser. 783. North Staffordshire Railway Bill, 1850. Stockton and Hartlepool Railway Company *v.* Leeds and Thirsk and Clarence Railway Companies, 5 Railway and Canal Cases, 691. Kingstown Township Bill, 1873.

BOOK II.

PRACTICE AND PROCEEDINGS IN PARLIAMENT.

CHAPTER VII.

INTRODUCTORY REMARKS. MEETING OF A NEW PARLIAMENT. ELECTION AND ROYAL APPROBATION OF THE SPEAKER OF THE COMMONS. OATHS. QUEEN'S SPEECH AND ADDRESSES IN ANSWER. PLACES OF PEERS AND MEMBERS OF THE HOUSE OF COMMONS. ATTENDANCE ON THE SERVICE OF PARLIAMENT. OFFICE OF SPEAKER IN BOTH HOUSES. PRINCIPAL OFFICERS. JOURNALS. ADMISSION OF STRANGERS. PROROGATION.

Introductory remarks.

THE proceedings of Parliament are regulated chiefly by ancient usage, or by the settled practice of modern times, apart from distinct orders and rules: but usage has frequently been declared and explained by both houses, and new rules have been established by positive orders and resolutions.

Ancient usage.

Ancient usage, when not otherwise declared, is collected from the Journals, from history and early treatises, and from the

Modern practice.

continued experience of practised members. Modern practice is often undefined in any written form; it is not recorded in the Journals; it is not to be traced in the published debates; nor is it known in any certain manner but by personal experience, and by the daily practice of Parliament, in conducting its various descriptions of business.

Numerous orders and resolutions for regulating the proceedings of Parliament are to be found in the Journals of

both houses, which may be divided into: 1, standing orders; 2, sessional orders; and 3, orders or resolutions, undetermined in regard to their permanence.

Standing orders.

1. Both houses have agreed, at various times, to standing orders, for the permanent guidance and order of their proceedings; which, if not vacated or repealed,[1] endure from one Parliament to another, and are of equal force in all. They occasionally fall into desuetude, and are regarded as practically obsolete: but, by the law and custom of Parliament, they are binding upon the proceedings of the house by which they were agreed to, as continual bye-laws, until their operation is concluded by another vote of the house, upon the same matter. But on the 1st December 1882, resolutions constituting standing committees were made standing orders until the end of the next session.

In the House of Lords particular attention is paid to the making and recording of standing orders. No motion may be granted for making a standing order, or for dispensing with one, the same day it is made, nor before the house has been summoned to consider it;[2] and every standing order, when agreed to, is added to the "Roll of Standing Orders," which is carefully preserved, and published from time to time. Until 1854, no authorized collection of the standing orders of the House of Commons had ever been compiled, except in relation to private bills.[3]

Sessional orders.

2. At the commencement of each session both houses agree to certain orders and resolutions, which, from being constantly renewed from year to year, are evidently not intended

[1] In the Lords, the rescinding of a standing order is termed "vacating;" in the Commons, "repealing." The earliest example of a standing order being repealed, was on the 21st Nov. 1722, 20 Com. J. 61. On the 23rd May 1678, certain standing orders against written protections were ordered to be published by being set up in Westminster Hall. Sometimes resolutions of a former session are read and made standing orders.

[2] Lords' S. O. No. 49.

[3] In 1854, a manual of "Rules, Orders and Forms of Proceeding of the House of Commons, relating to Public Business," was drawn up by the author of this work, under the direction of the Speaker; and was printed by order of the house in 1854, and in each succeeding Parliament.

to endure beyond the existing session. They are few in number, and have but a partial effect upon the business of Parliament.

Orders and resolutions.

3. The operation of orders or resolutions of either house, of which the duration is undetermined, is not settled upon any certain principle. By the custom of Parliament they would be concluded by a prorogation: but many of them are practically observed and held good, in succeeding sessions, and by different Parliaments, without any formal renewal or repetition. In such cases, it is presumed that the house regards its former orders as declaratory of its practice; and that without relying upon their absolute validity, it agrees to adhere to their observance, as part of the settled practice of Parliament.[1]

Statutes and prerogative.

In addition to these several descriptions of internal authority, by which the proceedings of both houses are regulated, they are governed, in some few particulars, by statutes and by royal prerogative.

Plan of the Second Book

The proceedings of Parliament will now be followed in the order which appears the best adapted for rendering them intelligible, without repetition, and apart from any presumption of previous knowledge on the part of the reader. In this chapter it is proposed to present an outline of the general forms of procedure, in reference to the meeting, sittings, adjournment, and prorogation of Parliament; and, in future chapters, to proceed to the explanation of the various modes of conducting parliamentary business, with as close an attention to methodical arrangement, as the diversity of the subjects will allow. Where the practice of the two houses differs, the variation will appear in the description of each separate proceeding: but wherever there is no difference, one

[1] See Report of Committee on Jewish Relief Act 1859, Sess. 1, No. 205; and 152 Hans. Deb. 3rd Ser. 459. For examples of resolutions being observed as permanent, without being made Standing Orders, may be cited, the ballot for precedence of members at the opening and prorogation of Parliament by the Queen, see *infra*, p. 220; the resolutions relating to the exclusion of strangers; the time for presenting estimates; and the new rules of the Committee of Supply.

account of a rule or form of proceeding, without more particular explanation, may be understood as applicable equally to both Houses of Parliament.

Meeting of a new Parliament.

On the day appointed by royal proclamation for the first meeting of a new Parliament for despatch of business,[1] the members of both houses assemble in their respective chambers. In the House of Lords, the lord chancellor acquaints the house, "that her Majesty not thinking it fit to be personally present here this day, had been pleased to cause a commission to be issued under the great seal, in order to the opening and holding of this Parliament." The five lords commissioners being in their robes, and seated on a form between the throne and the woolsack, then command the gentleman usher of the black rod to let the Commons know "the lords commissioners desire their immediate attendance in this house, to hear the commission read."

Commons attend in the House of Peers.

Meanwhile, the clerk of the Crown in Chancery has delivered to the clerk of the House of Commons a book, containing the names of the members returned to serve in the Parliament;[2] after which, on receiving the message from the black rod, the Commons go up to the House of Peers. The lord chancellor there addresses the members of both houses, and acquaints them that her Majesty has been pleased "to cause letters patent to be issued, under her great seal, constituting us, and other lords therein mentioned, her commissioners, to do all things in her Majesty's name, on her part necessary to be performed in this Parliament," &c. These

[1] See *supra*, p. 51. It may be observed that Parliament is generally summoned to meet on a Tuesday or Thursday, which are convenient days for the arrival of members. In 1809, Monday having been proposed for the meeting, Mr. Wilberforce protested that it would involve travelling on Sunday, and the day was accordingly changed.—3 Wilberforce's Diary, 397, 398. 1 Walpole, Life of Spencer Perceval, 302.

[2] If any returns are outstanding at the return of the General Election Writs, the deputy clerk of the Crown attends the clerk of the journals of the House of Commons, and there enters every return as it comes in, until the book is complete. This regulation was made by Mr. Speaker Abbot on the general election, Nov. 1812.—Crown Office Precedent Book.

letters patent are next read at length by the clerk; after which the lord chancellor, acting in obedience to these general directions,[1] again addresses both houses, and acquaints them,

"That her Majesty will, as soon as the members of both houses shall be sworn, declare the causes of her calling this Parliament; and it being necessary a Speaker of the House of Commons should be first chosen, that you, gentlemen of the House of Commons, repair to the place where you are to sit, and there proceed to the appointment of some proper person to be your Speaker; and that you present such person whom you shall so choose, here, to-morrow (at an hour stated), for her Majesty's royal approbation."[2]

Proceedings on change of ministry during recess.

In 1868, an exceptional course, in the opening of Parliament, was rendered necessary by peculiar circumstances. Parliament had been dissolved in November, and was summoned to meet on Thursday, 10th December. A week before this time, however, ministers having resigned, Mr. Gladstone had been charged to form a new administration, which was sworn in on the 9th December. To have prorogued Parliament, at so short a notice, would have been highly inconvenient: while without any ministers in the

[1] On the opening of a new Parliament, the Commissioners, without any express directions to that effect in the Commission, direct the Commons to elect a Speaker, and afterwards signify her Majesty's approval. But when a vacancy occurs in the office of Speaker, during a session, a special commission is required to signify the Queen's approval. (Mr. Speaker Shaw Lefevre, 1839; Mr. Speaker Brand, 1872.) Mr. Speaker Evelyn Denison having resigned very early in the session of 1872, it was suggested that the Commissioners, under the recent Commission for opening and holding Parliament, were empowered to signify this approval. After full consideration, however, it was determined by the Lord Chancellor that a new Commission was required, the Commissioners who opened Parliament being *functi officio*. In all similar cases, there had been a Commission; but it happened that on each of those occasions, Parliament had been opened by the king or queen in person.

[2] The forms here described have been in use, with little variation, since the 12th Anne (1713). Before that time the sovereign usually came down on the first day of the new Parliament, and on one occasion Queen Anne came down three times, viz. to open Parliament, to approve the Speaker, and to declare the causes of summons in a speech from the throne (1707), 15 Com. J. 393; 17 Ib. 472. In 1774, 1780, 1784, and 1790, George III. came down, on the first day, when the Commons were directed to chose their Speaker, 35 Com. J. 5; 38 Ib. 5; 40 Ib. 5; 46 Ib. 5.

House of Commons, and without previous consultation, it was not possible to open Parliament in the accustomed manner, with a Queen's speech and addresses from both houses. A precedent was found in December 1765, when the Rockingham ministry having come into office during the recess, the king, in person, opened Parliament in a speech, in which he adverted briefly to the troubles then commencing in the American colonies, but said he had then called Parliament together to give an opportunity of issuing writs. This precedent, however, was open to objection, as the speech having all the usual solemnities, required addresses in answer, and was, in fact, the occasion of amendments and debates.[1] A more convenient course was therefore taken. Instead of a Queen's speech, the lords' commissioners, under the great seal for opening and holding the Parliament, after the election of the Speaker, and some days spent in the swearing in of members of both houses, had it further in command to acquaint both houses that since the time when her Majesty had deemed it right to call them together, several vacancies had been caused by the acceptance of office from the Crown; and that it was her Majesty's pleasure that an opportunity should now be given to issue writs, and that after a suitable recess they might proceed to the consideration of such matters as would then be laid before them.[2] By this proceeding, which was merely formal, the necessity of addresses was avoided: there were no debates: the new writs were issued, and both houses adjourned.[3]

The same course was followed under similar circumstances in March 1874,[4] and again in April 1880.[5] On the latter occasion her Majesty's pleasure was further signified that the

[1] 17th December 1765, 31 Lords' J. 223.

[2] 15th December 1868, 124 Com. J. 5.

[3] In 1828, when there was a change of ministry, during the recess, no such preliminaries were deemed necessary. On the 29th January, sixteen new writs were moved; but the King's speech was delivered as usual, and the debate upon the address was conducted as if nothing had happened.

[4] 129 Com. J. 5.

[5] 135 Ib. 123.

recess should not be an impediment to the meeting of the House of Lords for judicial business.

Proceedings in the Lords.

But,—to proceed with the accustomed forms,—the Commons withdraw immediately after the Queen's pleasure for the election of a Speaker has been signified, and return to their own house, while the House of Lords is adjourned during pleasure, to unrobe. On that house being resumed,

Prayers.

the prayers, with which the business of each day is commenced, are read, for the first time, by a bishop,[1] or if no bishop be present, by any peer in holy orders;[2] or if there be none present, then by the lord chancellor or lord on the woolsack,[3] or by any peer who may be in the house.[4] The lord chancellor first takes and subscribes the oath singly, at the table. The clerk of the Crown delivers a certificate of the return of the sixteen representative peers of Scotland; and Garter king of arms the roll of the lords temporal; after which the lords who are present present their writs[5] at the table, and take and subscribe the oath required by law.[6] A peer of the blood royal takes the oath singly, like the lord chancellor.[7]

Introduction of peers.

At this time, also, peers are introduced who have received writs of summons, or who have been newly created by letters patent, and they present their writs or patents to the lord chancellor, kneeling on one knee.[8] They are introduced in their robes, between two other peers of their own dignity, also in their robes, and are preceded by the gentle-

[1] Usually the junior bishop, *i.e.* the bishop last admitted to the house.

[2] 73 Lords' J. 568.

[3] On the 19th July 1879, the 17th January 1881, and again on the following day, prayers were read by the Lord Chancellor, no bishop being present. Lords' Minutes.

[4] 26 Lords' J. 138. 157.

[5] A new writ is issued to every peer, except Scotch representative peers, at the commencement of each new Parliament. A peer by descent, before he can take his seat for the first time, is required to prove his right, to the satisfaction of the lord chancellor.

[6] See *infra*, p. 205.

[7] 89 Lords' J. 26 (Duke of Edinburgh); 93 Ib. 382; the same ceremonies were observed in the cases of the Duke of Connaught, and the Duke of Albany.

[8] 73 Lords' J. 569; 89 Ib. 6. For proceedings on the introduction of the Prince of Wales, see Lords' Minutes, Feb. 5th, 1863.

man usher of the black rod (or in his absence by the yeoman usher), by Garter king of arms (or in his absence by Clarenceux king of arms, or any other herald officiating for Garter king of arms), and by the earl marshal, and lord great chamberlain. It is not necessary, however, that the two last officers should be present. Being thus introduced, peers are conducted to their seats, according to their dignity.

When a new representative peer of Ireland has been elected, he is not introduced, but simply takes and subscribes the oath. The clerk of the Crown in Ireland attends with the writs and returns, with his certificate annexed, which certificate is read and entered on the Journal.[1]

And bishops.

A bishop is introduced by two other bishops, presents his writ, on his knee, to the lord chancellor, and is conducted to his seat amongst the spiritual lords: but without some of the formalities observed in the case of the temporal peers.

Peers by descent.

With regard to peers by descent, or by special limitation in remainder, there are the following Standing Orders:

"That all peers of this realm by descent, being of the age of one and twenty years, have right to come and sit in the House of Peers without any introduction.

"That no such peers ought to pay any fee or fees to any herald upon their first coming into the House of Peers.

"That no such peers may or shall be introduced into the House of Peers by any herald, or with any ceremony, though they shall desire the same, &c.[2]

By special limitations in remainder.

"That every peer of this realm claiming by virtue of a special limitation in remainder, and not claiming by descent, shall be introduced."[3]

Election of a Speaker by the Commons.

The Commons, in the meantime, proceed to the election of their Speaker. A member, addressing himself to the clerk (who, standing up, points to him, and then sits down), proposes to the house some other member then present, and moves that he, "do take the chair of this house as Speaker," which motion is seconded by another member.[4] If no other

[1] 73 Lords' J. 575.
[2] Lords' S. O. No. 13.
[3] Ib. No. 14.
[4] Mr. Pitt was desirous of proposing Mr. Addington himself: but Mr. Hatsell on being consulted said,

member be proposed as Speaker, the motion is ordinarily supported by an influential member (generally the leader of the House of Commons),[1] and the member proposed is called by the house to the chair, without any question being put.[2] He now stands up in his place, and expresses his sense of the honour proposed to be conferred upon him, and submits himself to the house; the house again unanimously call him to the chair, when his proposer and seconder take him out of his place and conduct him to the chair. If another member be proposed, a similar motion is made and seconded in regard to him; and both the candidates address themselves to the house. A debate ensues in relation to the claims of each candidate, in which the clerk continues to act the part of Speaker, standing up and pointing to the members as they rise to speak, and then sitting down. When this debate is closed, the clerk puts the question that the member first proposed "do take the chair of this house as Speaker," and if the house divide, he directs one party to go into the right lobby, and the other into the left lobby, and appoints two tellers for each.[3] If the majority be in favour of the member first proposed, he is at once conducted to the chair: but if otherwise, a similar question is put in relation to the other, which being resolved in the affirmative, that member is conducted to the chair by his proposer and seconder.[4]

"I think that the choice of the Speaker should not be on the motion of the minister. Indeed an invidious use might be made of it, to represent you as the friend of the minister, rather than the choice of the house." Mr. Pitt acknowledged the force of this objection. 1 Pellew, Life of Lord Sidmouth, 78, 79. A county and a borough member are generally selected for proposing and seconding the Speaker. In 1868, a borough and an university member performed this office. When a Speaker is re-elected without opposition, it has been usual for the proposer and seconder to be taken from different sides of the house, as in 1852, 1859, 1866, 1868, 1874, and 1880.

[1] 96 Com. J. 463.

[2] 108 Ib. 7; Hans. Deb. 4th November 1852. 2 Hatsell, 218 and *note*. 112 Com. J. 119; 114 Ib. 191; 121 Ib. 9.

[3] Election of Mr. Shaw Lefevre, 94 Com. J. 274. It had previously been the custom to appoint one teller only, for each party. See Chap. XII, Divisions.

[4] Election of Mr. Abercromby, 9th February 1835; 90 Com. J. 5.

The Speaker elect, on being conducted to the chair, stands on the upper step and "expresses his grateful thanks,"[1] or "humble acknowledgments,"[2] "for the high honour the house had been pleased to confer upon him;" and then takes his seat. The mace, which up to this time has been under the table, is now laid upon the table, where it is always placed during the sitting of the house, with the Speaker in the chair.[3] Mr. Speaker elect is then congratulated by some leading member, and the house adjourns.

Speaker elect returns thanks.

The mace.

The house meets on the following day, and Mr. Speaker elect takes the chair and awaits the arrival of the black rod, from the lords commissioners. When that officer has delivered his message, Mr. Speaker elect, with the house, goes up to the House of Peers, and acquaints the lords commissioners,—

Royal approbation of the Speaker elect.

"that in obedience to her Majesty's commands her Majesty's faithful Commons, in the exercise of their undoubted right and privilege, have proceeded to the election of a Speaker, and as the object of their choice he now presents himself at your bar, and submits himself with all humility to her Majesty's gracious approbation."

In reply, the lord chancellor assures him of her Majesty's sense of his sufficiency, and "that her Majesty most fully approves and confirms him as the Speaker."[4]

When the Speaker has been approved, he lays claim, on behalf of the Commons, "by humble petition to her Majesty, to all their ancient and undoubted rights and privileges,"

Lays claim to the privileges of the Commons.

[1] 90 Com. J. 5.

[2] 96 Ib. 465; 103 Ib. 7; 108 Ib. 7; 112 Ib. 119; 135 Ib. 123.

[3] The present mace dates from the restoration of Charles II., when a new mace was ordered, 21st May 1660. 8 Com. J. 39. After the death of Charles I., in 1648, a new mace had been made, which was the celebrated "bauble" taken away by Cromwell's order, on the 19th April 1653, and restored on the 8th July of the same year. 6 Ib. 166; 7 Ib. 282.

[4] 80 Lords' J. 8; 89 Ib. 7, &c. It was formerly customary for the Speaker elect to declare that he felt the difficulties of his high and arduous office, and that, "if it should be her Majesty's pleasure to disapprove of this choice, her Majesty's faithful Commons will at once select some other member of their house, better qualified to fill the station than himself."

which being confirmed, the Speaker, with the Commons, retires from the bar of the House of Lords.

Speaker elected for the whole Parliament.

The Speaker thus elected and approved, continues in that office during the whole Parliament, unless in the meantime he resigns, or is removed by death.

Vacancy during the session.

In the event of a vacancy during the session, similar forms are observed in the election and approval of a Speaker:[1] except that instead of her Majesty's desire being signified by the lord chancellor in the House of Lords, a minister of the Crown, in the Commons, acquaints the house that her Majesty "gives leave to the house to proceed forthwith to the choice of a new Speaker;"[2] and when the Speaker has been chosen, the same minister acquaints the house that it is her Majesty's pleasure that the house should present their Speaker to-morrow (at an hour stated) in the House of Peers, for her Majesty's royal approbation. Mr. Speaker elect puts the question for adjournment, and when the house adjourns, he leaves the house, without the mace before him. On the following day the royal approbation is given by the lords commissioners under a commission for that purpose, with the same forms as at the meeting of a new Parliament, except that the claim of privileges is omitted.[3]

[1] These forms preclude the proposal of any member as Speaker during the session, who has not taken the oaths and his seat. See case of Mr. Charles Dundas, proposed by Mr. Sheridan, 11th February 1801. 35 Parl. Hist. 951; 1 Pellew, Life of Sidmouth, 304. In 1822, this consideration prevented Mr. Speaker Manners Sutton from vacating his seat, in order to stand for the University of Cambridge. 1 Court and Cabinets of Geo. IV. 394; Lord Colchester's Diary, iii. 260.

[2] 94 Com. J. 274. 127 Ib. 23. For probably the earliest instance of proceedings on the death of a Speaker, see 1 Com. J. 116; 1 Parl. Hist. 811.

[3] 71 Lords' J. 308; 11 Com. J. 272; 94 Ib. 274; 127 Ib. 23; 1 Pellew, Life of Lord Sidmouth, 304. On the election of Mr. Addington in 1789, the king himself came down to the House of Lords, to signify his approbation in person. 44 Com. J. 435; 1 Pellew, Life of Lord Sidmouth, 66-68. For proceedings taken upon the retirement of a Speaker, see Journals and Debates, 30th May, and 3rd and 5th June 1817 (Mr. Speaker Abbot); 15th May 1839 (Mr. Speaker Abercromby); 9th and 10th March 1857 (Mr. Speaker Shaw Lefevre); February 1872 (Mr. Speaker Evelyn Denison).

The ceremony of receiving the royal permission to elect a Speaker, and the royal approbation of him when elected, has been constantly observed, except during the Civil War, and the Commonwealth, and on three other occasions, when from peculiar circumstances it could not be followed. Exceptions to these forms.

1. Previous to the Restoration in 1660, Sir Harbottle Grimston was called to the chair without any authority from Charles II., who had not yet been formally recognized by the Convention Parliament.[1] 2. On the meeting of the Convention Parliament on the 22nd January 1688, James II. had fled, and the Prince of Orange had not yet been declared king; when the Commons chose Mr. Henry Powle as Speaker, by their own authority.[2] 3. Mr. Speaker Cornwall died on the 2nd January 1789, at which time George III. was mentally incapable of attending to any public duties: and on the 5th, the house proceeded to the choice of another Speaker, who immediately took his seat, and performed all the duties of his office.[3]

So strong had been the sense of the Commons, of the necessity of having their choice confirmed, that in 1647, when the king had been delivered up by the Scots, and was under the guard of the Parliament and the army, they resorted to the singular expedient of presenting their Speaker, Mr. Henry Pelham, to the Lords, who signified their approval.[4]

The only instance of the royal approbation being refused was in the case of Sir Edward Seymour in 1678.[5] Sir John Popham, indeed, had been chosen Speaker in 1449, but his excuse being admitted by the king, another was chosen by Royal approbation refused.

[1] 8 Com. J. 1.

[2] 10 Ib. 9.

[3] 44 Ib. 45.

[4] 5 Ib. 259, 260; 5 Clarendon, Hist. 462.

[5] 6th March 1678-79. 4 Parl. Hist. 1092; 6 Grey's Deb. 404 *et seq.*, 424. Mr. Parry inadvertently states that Mr. Serjeant Gregory was elected on that day, and rejected by the king (Parliaments and Councils of England, 586); but the latter was not elected until the 17th, after a short prorogation, by which the contention between the Court and the Commons, arising out of the disapproval of Sir E. Seymour, had been compromised.

the Commons in his place;[1] and Sir Edward Seymour, who knew that it had been determined to take advantage of his excuse, purposely avoided making any, so as not to give the king an opportunity of treating him in the same manner as his predecessor had been treated in a former reign.[2]

Oaths in the Commons.

The Speaker, on returning from the Lords, reports to the house his approval by her Majesty, and her confirmation of their privileges, and "repeats his most respectful acknowledgments to the house for the high honour they have done him." He then puts the house in mind that the first thing to be done is to take and subscribe the oath required by law;[3] and himself first, alone, standing upon the upper step of the chair, takes and subscribes the oath accordingly; in which ceremonies he is followed by the other members who are present. On the following day, the daily prayers are read, for the first time, by Mr. Speaker's chaplain.[4] The Speaker also, for the

[1] 1 Hans. Parl. Hist. 385; 5 Rot. Parl. 171. The excuse was genuine, Sir J. Popham being an old soldier, who had been wounded in the wars of the late reigns. His excuse is entered "debilitate sui corporis, guerrarum fremitibus . . . ac diversarum infirmitatum vexationibus, necnon senii gravitate multipliciter depressi."

[2] See also the case of John Cheyne, 1st Hen. IV., 1399, who excused himself on account of illness, after he had been approved by the king. 3 Rot. Parl. 424.

[3] The "out-door oaths," formerly taken by members of both houses before the lord steward, in addition to the oaths taken in the house itself, were abolished by 1 & 2 Will. IV. c. 9.

[4] In case of the accidental absence of the chaplain, Mr. Speaker reads prayers, as was done once by Mr. Speaker Abercromby, and three times by his successor. On the last of these occasions (May 8th 1856), the Speaker was in his full dress robes, the house having met to proceed to Buckingham Palace with an address. On the 26th July 1858, and on the 31st March 1860, Mr. Speaker Denison also read prayers; and the present Speaker has read prayers on several occasions. Chaplains or ministers were first appointed "to pray with the house daily," during the Long Parliament. 3 Com. J. 365; 7 Ib. 366. 424. 595. Before that time prayers had been read by the clerk, and sometimes by the Speaker. On the 23rd March 1603, prayers "were read by the clerk of the house (to whose place that service anciently appertains), and one other special prayer, fitly conceived for that time and purpose, was read by Mr. Speaker; which was voluntary, and not of duty or necessity, though heretofore of late time the like hath been done by other Speakers." 1 Com. J. 150. On the 8th June 1657, there being no minis-

first time, now counts the house, and cannot take the chair until forty members are present;[1] as there is no commission on that day, to make a house, and the oath is required, by statute, to be taken whilst a full House of Commons is there duly sitting, with their Speaker in his chair. The members continue to take the oath on that and the succeeding day, after which the greater part are sworn, and qualified to sit and vote.[2]

Oaths formerly taken.

The oaths of allegiance, supremacy and abjuration, were formerly prescribed by the statutes 30 Chas. II. stat. 2, the 13 Will. III. c. 6, and 1 Geo. I. stat. 2, c. 13; and were required to be taken by every member. By the 10 Geo. IV. c. 7, a special oath was provided for Roman Catholic members. But by the 21 & 22 Vict. c. 48, one oath for Protestant members was substituted for the oaths of allegiance, supremacy and abjuration; and by the 29 & 30 Vict. c. 19, a single oath was prescribed for members of all religious denominations, which, by the 31 & 32 Vict. c. 72, is now in the following form:—"I —— do swear that I will be faithful and bear true allegiance to her Majesty Queen Victoria, her heirs and successors, according to law. So help me God."[3]

One oath substituted for former oaths.

Time and manner of taking the oath.

The oaths were required, by former statutes, to be "solemnly and publicly made and subscribed" between the hours of nine in the morning and four in the afternoon, at the table, in the middle of the house, and whilst a full house is there, with their Speaker "in his place," or "in his chair."

This provision caused the ordinary meeting of the House of Commons to be fixed for a quarter before four o'clock in

ter present, and it being uncertain whether the Speaker or clerk should read prayers, the house proceeded to business without any prayers. 2 Burton, Diary, 191.

[1] 2 Hatsell, 173.

[2] See 1 Pellew, Life of Sidmouth, 176.

[3] In one case, an attempt was made to obtain from a member, who was about to bring forward a motion, a repudiation of statements made elsewhere, which were alleged to be at variance with the oath he had taken: but the Speaker stated that it was no part of his duty to determine what was consistent with that oath, and that the terms of the motion were not in violation of any rules of the house. 210 Hans. Deb. 3rd Ser. 252.

the afternoon; and the appearance of a member to be sworn, before four o'clock, interrupted any other business.[1]

By the Oaths Act of 1866,[2] the same solemnities are to be observed: but the oath may be taken at such hours and according to such regulations as each house may, by its Standing Orders, direct. Until 1843, the time for taking the oaths, by both houses, continued limited to the hours between nine and four: but, by 6 & 7 Vict. c. 6, the Lords were enabled to take the oaths until five o'clock in the afternoon. After the passing of the Oaths Act of 1866, the Lords agreed to a Standing Order, on the 3rd May, requiring the oath to be taken, as usual, between the hours of nine and five.[3] But the House of Commons by Standing Order, 30th April 1866, provided,—

"That members may take and subscribe the oath required by law, at any time during the sitting of the house, before the orders of the day and notices of motions have been entered upon, or after they have been disposed of: but no debate or business shall be interrupted for that purpose."

Refusal to take oaths.

When the oaths of allegiance and supremacy were required, members who refused to take them were adjudged by the house to be disqualified by the statutes from sitting, and new writs were issued in their room. Soon after the Revolution of 1688, Sir H. Mounson and Lord Fanshaw refused to take the oaths, and were discharged from being members of the house;[4] and on the 9th of January following, Mr. Cholmly, who said he could not *yet* take the oaths, was committed to the Tower for his contempt.[5] But the most remarkable precedent is that of Mr. O'Connell, who had been returned for the county of Clare, in May 1829, before the passing of the Roman Catholic Relief Act. On the oaths being tendered to him by the clerk, he refused to take the

[1] 2 Hatsell, 90. 105 Com. J. 629. 108 Ib. 178. 114 Ib. 98 (Mr. Sotheron Estcourt). 121 Ib. 140.

[2] 29 & 30 Vict. c. 19.

[3] 3 Lords' S. O. No. 15.

[4] 10 Com. J. 131. 5 Parl. Hist. 254.

[5] 10 Com. J. 328.

oath of supremacy, and claimed to take the new oath contained in the Roman Catholic Relief Act,[1] which had been substituted for the other oaths, as regards Roman Catholic members to be returned after the passing of the Act. Mr. O'Connell was afterwards heard upon his claim; but the house resolved that he was not entitled to sit or vote, unless he took the oath of supremacy. Mr. O'Connell persisted in his refusal to take that oath, and a new writ was issued for the county of Clare.[2]

Jews unable to take the oaths until 1858.

The only legal obstacle which, prior to 1858, prevented a Jew from sitting and voting in Parliament, arose from the words, "upon the true faith of a Christian," at the end of the oath of abjuration. These words were omitted from the oath when taken by a Jew, in certain cases, by the 10 Geo. I. c. 4; and again, by the 13 Geo. II. c. 7, for the naturalizing foreign Protestants; and lastly, on admission to municipal offices, by the 8 & 9 Vict. c. 52; but as regards the parliamentary oaths, there was no statute which could be construed so as to justify the omission of these words. In 1850, Baron Lionel Nathan de Rothschild, who during the two previous sessions had been one of the members for the city of London, but had not taken the oaths and his seat, was admitted to be sworn on the Old Testament, being the form most binding on his conscience.[3] Having taken the oaths of allegiance and supremacy, he proceeded to take the oath of abjuration, but omitted the concluding words, "on the true faith of a Christian," "as not binding on his conscience," adding the words "so help me God;" whereupon he was directed to withdraw.[4] After debate, the house resolved that he was "not entitled to vote in this house, or to sit in this house during any debate, until he shall take the oath of abjuration, in the form appointed by law."[5] No new writ, however, was

Baron Rothschild.

[1] 10 Geo. IV. c. 7.

[2] 84 Com. J. 303. 311. 314. 325.

[3] 105 Com. J. 584; Hans. Deb. 29th July 1850. See 1 & 2 Vict. c. 105.

[4] 105 Com. J. 590; Hans. Deb. 30th July 1850.

[5] 105 Com. J. 612; Hans. Deb. 5th August 1850.

issued, as it appeared that the statutes by which the oath of abjuration was appointed to be taken did not attach the penalty of disability to the refusal to take that oath, but solely to the offence of sitting and voting without having taken it.[1]

Mr. Alderman Salomons.

In 1851, Mr. Alderman Salomons, having been returned for the borough of Greenwich, pressed his claim even further than Baron Rothschild. He was sworn on the Old Testament, and omitting the words "upon the true faith of a Christian," in the oath of abjuration, concluded with the words "so help me God." This omission being reported to the Speaker, he directed Mr. Salomons to withdraw.[2] On a subsequent day, while further proceedings in this case were under discussion, Mr. Alderman Salomons entered the house and took his seat within the bar. He was directed by the Speaker to withdraw, but continued in his seat. He was then ordered by the house to withdraw, but being called upon by the Speaker to obey it, he still persisted in retaining his seat. Upon which the Speaker directed the serjeant to remove him below the bar; and the serjeant having placed his hand upon Mr. Salomons, he was conducted below the bar.[3] In the meantime, however, he had not only sat during debates in the house, but had voted in three divisions. In this case, as in the last, the house did not think fit to issue a new writ; but, having refused to hear counsel on the matter, agreed to a resolution in the same form, declaring that he was not entitled to sit or vote.[4] The legal validity of this resolution was afterwards established, beyond further question, by judgments in the Court of Exchequer,[5] and the Court of Exchequer Chamber.[6]

[1] 13 Will. III. c. 6. 6 Anne, c. 7. 6 Geo. III. c. 53. Debates 30th July and 5th August 1850. See also Report of the Committee on Oaths of Members, 1850 (268).

[2] 106 Com. J. 372; Hans. Deb. 18th July 1851.

[3] 106 Com. J. 381; Hans. Deb. 21st July 1851.

[4] 106 Com. J. 373. 407.

[5] Miller *v.* Salomons, 19th April 1852; Law Journ. vol. 21, N. S., p. 160. 7 Exch. Reports, 475.

[6] Salomons *v.* Miller, 11th May

Admission of the Jews to Parliament.

After repeated attempts to remove this disability from the Jews by legislation, an Act was at length passed in 1858, by which it was provided, that either house might resolve that henceforth any person professing the Jewish religion may omit the words, "and I make this declaration on the true faith of a Christian." And on the 26th July 1858, Baron Lionel Nathan de Rothschild came to the table to be sworn; and the house having agreed to resolutions in the terms of the recent Act, he was sworn upon the Old Testament, and took and subscribed the oath in the modified form.[1] As a resolution of the house, under this Act, did not continue in force beyond the current session, it was necessary to renew it, in the next session, before other members could be admitted to be sworn, in the same manner:[2] but by another Act, passed in 1860, a Standing Order was substituted for a resolution, when Jewish members were entitled to be sworn without any preliminary proceedings. The 29 & 30 Vict. c. 19, however, finally removed every invidious distinction, by omitting the words "on the true faith of a Christian" from the new form of oath; and henceforward Jews were placed in the same position as other members.

Declarations by Quakers, &c.

Quakers, Moravians, Separatists, and persons who have ceased to be Quakers and Moravians, having a conscientious objection to an oath, are permitted to make affirmations to the same effect. In 1693, John Archdale, a Quaker, having declined to take the oaths, "in regard to a principle of his religion," a new writ was issued in his room.[3] But subsequently to that case, several statutes permitting Quakers to make affirmations instead of oaths were passed;[4] and upon a

1853; Law Journ. vol. 22, N. S., p. 169. 8 Exch. Rep. 778. A writ of error was lodged in the House of Lords, but the parties did not apply for a hearing; 147 Hans. Deb. 3rd Ser. 108.

[1] 113 Com. J. 345.

[2] Proceedings on admission of Baron Meyer de Rothschild, 16th Feb. 1859. 114 Com. J. 59. 192. Hans. Deb. 3rd Ser. 459.

[3] 12 Com. J. 386. 388.

[4] 6 Anne, c. 23. 1 Geo. I. st. 2, c. 6 and c. 13. 8 Geo. I. c. 6. 22 Geo. II. c. 46.

general construction of these statutes, in 1833, Mr. Pease, a Quaker, was admitted to sit and vote, upon making affirmation to the effect of the oaths directed to be taken at the table.[1] In the same year an Act was passed[2] to allow Quakers and Moravians to make affirmation in all cases where an oath is or shall be required. Acts were also passed giving the same privilege to persons who had ceased to be Quakers and Moravians,[3] and to Separatists;[4] and several members of these different religious denominations afterwards made affirmations instead of oaths.[5] And by the 29 & 30 Vict. c. 19, and 31 & 32 Vict. c. 72, s. 11, all such persons are allowed to make a solemn affirmation or declaration instead of taking the oath prescribed by the latter Act.

Mr. Bradlaugh's affirmation, 1880.

On the 3rd May 1880, Mr. Bradlaugh, member for Northampton, claimed to make the affirmation, not under any of these Acts, but by virtue of the Evidence Amendment Acts 1869 and 1870. A select committee being appointed to consider this novel claim,[6] reported that persons entitled, under these Acts, to make a declaration in courts of justice cannot be admitted to make an affirmation or declaration in the House of Commons.[7] After this decision Mr. Bradlaugh, on the 21st May, came to the table to take the oath; but this being objected to, on the ground of his previous claim to make an affirmation, by virtue of Acts under which the presiding judge at a trial had been satisfied that an oath would have no binding effect on his conscience, a select committee was appointed, after much discussion, to consider the facts and circumstances under which Mr. Bradlaugh claimed to have the oath administered to him, and as to the right and jurisdiction of the house to refuse to allow the oath to be administered to him.[8]

[1] 88 Com. J. 41. See also report of the Committee on his case, 1833 (6).

[2] 3 & 4 Will. IV. c. 49.

[3] 1 & 2 Vict. c. 77.

[4] 3 & 4 Will. IV. c. 82.

[5] 90 Com. J. 5; 98 Ib. 3; 103 Ib. 7. 566; 106 Ib. 3; 108 Ib. 7; 124 Ib. 5, &c.

[6] 135 Ib. 124.

[7] Report (159, Sess. 2).

[8] 135 Com. J. 137. Hans. Deb. 21st May 1880.

This committee reported that "the house can, and, in the opinion of the committee, ought to prevent Mr. Bradlaugh going through the form" of taking the oath. At the same time they recommended that he should be allowed to make the affirmation, subject to its legality being tested in a court of justice.[1]

In accordance with this report, a motion was made, on the 21st June, to admit Mr. Bradlaugh to make an affirmation; to which, however, an amendment was made, that, having regard to the reports of two select committees, he be not permitted to take the oath or make the affirmation.[2]

Being now refused either the oath or affirmation, Mr. Bradlaugh again came to the table, on the 23rd June, and claimed to take the oath. On being formally acquainted with the recent resolution of the house, he desired to be heard upon his claim; and the house having resolved that he be heard at the bar, he was heard accordingly, and withdrew. When afterwards informed, by Mr. Speaker, that the house had made no further order concerning his claim, and directed to withdraw, he insisted upon his right, as a duly-elected member, to take the oath and his seat, and refused to withdraw. The house now ordered his withdrawal, but he refused to obey the order of the house as being against the law; and Mr. Speaker then called upon the serjeant to remove him; and that officer, having placed his hand upon Mr. Bradlaugh, conducted him below the bar; but Mr. Bradlaugh again advancing within the bar, and asserting his determination to resist the order of the house, he was committed to the custody of the serjeant-at-arms.[3] On the following day he was discharged.

The next step taken, in this perplexing case, was the passing of a Standing Order, on the 1st July, allowing any member claiming to be a person, for the time being, permitted to make an affirmation, to make it without question, subject to any

[1] Report (226, Sess. 2).
[2] 135 Com. J. 228. 233, 234.
[3] Ib. 235. Hans. Deb. 23rd June 1880.

liability by statute,[1] and under this order Mr. Bradlaugh at length took his seat.[2]

Mr. Bradlaugh's oath, 1881.

The house was relieved from further difficulties until the next session; but upon an action for penalties, which was immediately commenced, the High Court of Justice adjudged that Mr. Bradlaugh had not qualified himself to sit by taking the affirmation,[3] and this judgment was affirmed by the Court of Appeal.[4] Having already sat and voted, his seat was now vacant, unless the judgment should be reversed by the House of Lords; and, without awaiting further steps in the suit, he agreed to the issue of a new writ.[5]

Being returned a second time, he came to the table, on the 26th April, to take the oath. The resolution of the previous session was no longer in force; but he was interrupted by a motion that he be not permitted to go through the form of repeating the words of the oath. On being directed to withdraw, he claimed to be heard against this motion, and he was accordingly heard at the bar. The debate continued, and after the failure of an amendment, the resolution was carried. Mr. Bradlaugh again came to the table to be sworn, and on refusing to withdraw, in obedience to the order of the house, was conducted below the bar by the serjeant. Once more he advanced within the bar, and was again removed, when the house adjourned.[6]

On the 10th May, Mr. Bradlaugh again came to the table, and on refusing to withdraw when directed by Mr. Speaker, was conducted by the serjeant below the bar. Standing at the bar he declared that he refused to obey the order of the house, as it was illegal; whereupon the serjeant was ordered to remove him from the house until he shall engage not further to disturb the proceedings of the house.

[1] S. O. No. 67. 135 Com. J. 267.

[2] 2nd July.

[3] 7 Q. B. D. 39—61; 50 Law Journ. 342.

[4] Ib.

[5] 1st April 1881. Upon appeal to the Lords, he obtained judgment, on the 9th April 1883, that a common informer could not bring the action and recover costs.

[6] 136 Com. J. 198. Hans. Deb. 26th April 1881.

Hitherto he had been admitted to a seat below the bar, like other members before they have taken the oath; but now he was not permitted to enter the door of the house.[1] Otherwise, he had free access to the lobby, the libraries, and all other parts of the building.

On the 4th July, he gave notice in writing to Mr. Speaker, the clerk of the house, and the serjeant, that on or before the 3rd August he should again present himself at the table, and would resist, and endeavour to overcome, any force used against him. On that day he came, and strove to force an entrance, when the serjeant, acting under directions from Mr. Speaker, removed him from the door; and in order to prevent further attempts to enter the house, and to restrain disorders in the lobby and approaches, conducted him beyond the precincts of the house. The house approved the action of the Speaker, and of the officers acting under his orders.[2] Mr. Bradlaugh afterwards brought an action against the deputy-serjeant; but on demurrer judgment was given for the defendant;[3] and on the 20th February 1883, final judgment was given for the defendant.[4]

Bradlaugh *v.* Erskine.

An attempt was made during this session to avoid further troubles, by an amendment of the law; but being strongly opposed, it was abandoned.

At the opening of Parliament on the 7th February 1882, Mr. Bradlaugh again presented himself to take the oath; but was at once met, as on previous occasions, by a motion forbidding him to go through the form of taking the oath. The previous question was moved, and Mr. Bradlaugh was heard, at the bar, in support of his claim. The resolution, however, was carried, when Mr. Bradlaugh immediately returned, in order to take the oath, and refused to withdraw until his withdrawal had been ordered by the house.[5]

Mr. Bradlaugh's case, 1882.

[1] 136 Com. J. 227. Hans. Deb. 10th May 1881.

[2] 136 Hans. Deb. 426. 264 Ib. 3rd Ser. 695.

[3] "Times" Report, 12th January 1883.

[4] Ib. 21st February 1883.

[5] 137 Com. J. 3. Hans. Deb. 7th Feb. 1882.

The proceedings in this case now assumed another form. On the 21st February 1882, a motion for a new writ for Northampton was made, on the obviously insufficient ground that Mr. Bradlaugh had been prevented from taking the oath, and was negatived. Upon the numbers being declared, Mr. Bradlaugh suddenly advanced to the table, and read from a paper, in his hand, the words of the oath, and having kissed a copy of the New Testament which he had brought with him, signed the paper. The Speaker at once ordered him to withdraw, and he retired below the bar, leaving the paper and the copy of the New Testament on the table.[1] But he immediately re-entered the house, and took a seat within the bar. Being directed by the Speaker to withdraw, he stated, from his place, that he had now taken the oath required by law, and had also taken his seat, and then retired below the bar.

A motion was now made for a new writ, on the ground that Mr. Bradlaugh had sat in the house without taking the oath; but the debate was adjourned. On the following day it was resumed, when Mr. Bradlaugh, having failed to obtain the pleasure of the house for his being heard at the bar, again took a seat in the house. The Speaker called the attention of the house to his presence, when Mr. Bradlaugh stated that it was his desire to obtain the indulgence of the house that he might be heard: but maintained his right to sit for Northampton. The Speaker now called attention to the repeated acts of disobedience committed by Mr. Bradlaugh, and directed him to withdraw, which he did, while repeating that he claimed his right to sit within the bar. The house now deemed it necessary to vindicate its own authority, and visited Mr. Bradlaugh's disobedience to its orders by expulsion.[2]

A new writ having been issued for Northampton, Mr.

[1] A friendly suit was brought to try the legality of this act, but as, in the judgment of the court, the pleadings were collusive, it was not tried. Gurney *v.* Bradlaugh 1882.

[2] 137 Com. J. 59. 61. Hans. Deb. 21st February 1882.

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Bradlaugh was again returned: but as soon as his return had been received, and before he had offered himself to be sworn, the house, on the 6th March re-affirmed the resolution of the 7th February, by which he had been prevented from going through the form of taking the oath.[1] On the 7th March the Speaker stated that having regard to the resolution of the previous day, it would be irregular and disorderly for two members to introduce Mr. Bradlaugh, and that he should consider himself bound not to call upon him to come to the table.[2]

Affirmation Bill, 1883.

At the commencement of the session of 1883, Mr. Bradlaugh refrained from again presenting himself to take the oath, in expectation of an Affirmation Bill, which was shortly introduced. But, on the 4th May, when this bill had been lost, he renewed his claim to take the oath. Once more he was heard at the bar: but the house re-affirmed its former resolutions.

Omission to take the oaths.

Penalties.

By the 30th Chas. II. stat. 2, the 13th Will. III. c. 6, and 1 Geo. I. stat. 2, c. 13, severe penalties and disabilities were inflicted upon any member of either house who sat or voted without having taken the oaths. By the 29 & 30 Vict. c. 19, any peer voting by himself or his proxy, or sitting in the house of peers without having taken the oath, is subject, for every such offence, to a penalty of 500*l.*; and any member of the House of Commons who votes as such, or sits during any debate after the Speaker has been chosen, without having taken the oath, is subject to the same penalty, and his seat is also vacated in the same manner as if he were dead. When members have neglected to take the oaths from haste, accident, or inadvertence, it has been usual to pass Acts of indemnity, to relieve them from the consequences of their neglect.[3] In the Commons, however, it is necessary to

[1] 137 Com. J. 87. Hans. Deb. 6th March 1882. On the 9th March 1882, the Speaker stated that to object to any member taking the oath except on grounds public or notorious, or within the cognizance of the house, would be simply vexatious. 267 Hans. Deb. 3rd Ser. 442.

[2] 267 Hans. Deb. 3rd Ser. 390.

[3] 45 Geo. III. c. 5 (Lord J. Thynne),

move a new writ immediately the omission is discovered, as the member's seat is vacated.[1]

Members entitled to privileges before they are sworn.

But although a member may not sit and vote until he has taken the oaths, he is entitled to all the other privileges of a member, and is otherwise regarded, both by the house and by the laws, as qualified to serve, until some other disqualification has been shown to exist. Thus, on the 13th April 1715, it was resolved, "that Sir Joseph Jekyll was capable of being chosen of a committee of secrecy, though he had not been sworn at the clerk's table."[2] On the 11th May 1858, acting upon this precedent, the house added Baron Rothschild, who had now continued a member for eleven years, without having taken the oaths, to the committee appointed to draw up reasons to be offered to the Lords at a conference, for disagreeing to the Lords' amendments to the Oaths Bill;[3] and on the 18th, he was appointed one of the managers of the conference.[4] On the 11th May 1880, Mr. Bright, who had not yet made his affirmation, was appointed a member of the Parliamentary Oath Committee, upon which he served and voted, before he had made his affirmation. But a member may not present a petition until he has been sworn, as that is a proceeding within the house itself.[5]

In 1849, Baron Lionel Nathan de Rothschild had been a member for two sessions, without having taken the oaths; when he accepted the Chiltern Hundreds. On the 27th June, a new writ was issued for the city of London, and he was again returned, and continued to be a member without

56 Geo. III. c. 48 (Earl Gower). 1 Will. IV. c. 8 (Lord R. Grosvenor). 5 Vict. c. 3 (Earl of Scarborough). Lord Plunket, 1880.

[1] 60 Com. J. 148; 67 Ib. 286; 69 Ib. 144; 71 Ib. 42; 86 Ib. 353.

[2] 18 Ib. 59; Chandler's Debates; 7 Parl. Hist. 57; 2 Hatsell, 88, *n.*

[3] 113 Com. J. 167. 150 Hans. Deb. 3rd Ser. 336. 430.

[4] 113 Com. J. 182.

[5] On the 14th March 1881, objection was taken to Mr. Bradlaugh presenting a petition, after the High Court of Justice had adjudged that the making an affirmation had not qualified him to sit and vote: but as notice of an appeal had been given, he was allowed to present the petition. 259 Hans. Deb. 3rd Ser. 892. But on the 22nd June 1882, he was informed by Mr. Speaker, that he could not present a petition, until he had taken the oath. 137 Com. J. 295.

taking the oaths: but being again returned in succeeding Parliaments, he accepted the Chiltern Hundreds a second time in 1857; and on the 23rd July a new writ was issued for the city of London, and he was for the fifth time returned. It is usual for members who have not yet taken the oaths, to sit below the bar;[1] and care must be taken that they do not, inadvertently, take a seat within the bar, by which they would render themselves liable to the penalties and disqualifications imposed by the statute.

Certificate of clerk of the Crown.

At the beginning of a Parliament, the Return Book, received from the clerk of the Crown, is sufficient evidence of the return of a member, and the oaths are at once administered. If a member be elected after a general election, the clerk of the Crown sends to the clerk of the house a certificate of the return received in the Crown Office; and the member is required to produce this certificate from the Public Business Office, before the clerk of the house will administer the oaths. The neglect of this rule in 1848, gave rise to doubts as to the validity of the oaths taken by a member. Mr. Hawes was elected for Kinsale on the 11th March; on the 15th, he was sworn at the table: but his return was not received by the clerk of the Crown until the 18th; and it was questioned whether the oaths which he had taken before the receipt of the return, had been duly taken. A committee was appointed to inquire into the matter, who reported, "that although the return of the indenture to the Crown Office has always been required by the house, as the best evidence of a member's title to be sworn, yet that the absence of that proof cannot affect the validity of the election, nor the right of a person duly elected, to be held a member of the house."[2] The com-

[1] On the 18th May 1849, when notice was taken that strangers were present, Baron Rothschild was sitting below the bar, and retained his seat there during the exclusion of strangers, in virtue of his return to the house, although he had not taken the oaths and his seat; and Mr. Bradlaugh was present below the bar, during many divisions, while forbidden to take the oath.

[2] 1848, Sess. No. 256.

mittee, at the same time, recommended a strict adherence to the practice of requiring the production of the usual certificate.[1]

Subscription of oaths.

As no property qualification is now required,[2] so soon as a member has been sworn, he subscribes the oath which he has taken, in a book, at the table, commonly called the "test roll;" and is then introduced to the Speaker by the clerk of the house.

New members sworn after general election.

Members returned upon new writs issued after the general election, take the oaths in the same manner; and, "in compliance with an ancient order and custom," explained by a resolution of the 23rd February 1688, "they are introduced to the table between two members, making their obeisances as they go up, that they may be the better known to the house;"[3] but this practice is not observed in regard to members who come in upon petition,[4] after a general election, for they are supposed to have been returned at the beginning of the Parliament, when no such introduction is customary. On the 18th February 1874, Dr. Kenealy, a new member, came to the table to be sworn, without being introduced, according to custom, by two members; but the Speaker acquainted him with the order and custom of the house, and, refusing to hear any comments from him, directed him to withdraw. After discussion, the house resolved that the order and custom be dispensed with, on this occasion.[5]

Members seated on petition.

Another difference of form is to be remarked, in reference to new members, and members seated on petition, when coming to be sworn. The former not being in the original return-book, must bring with them, as already stated, a certificate of their return from the clerk of the Crown: but the

[1] It was stated in evidence, that in July 1846, Lord Alfred Paget being returned for Lichfield, brought up the return himself, which he took with him and produced at the table of the house; and after he had been sworn, the return was sent to the Crown Office. Questions, 87–89.

[2] 21 & 22 Vict. c. 26.

[3] 10 Com. J. 34.

[4] 2 Hatsell, 85, *n.*

[5] 130 Com. J. 52; 222 Hans. Deb. 3rd Ser. 486.

latter having become members by the adjudication of an election judge, the clerk of the Crown amends the return by order of the house; and their names are consequently entered in the return-book, as if they had been originally returned.

Demise of the Crown.

In the event of the demise of the Crown, all the members of both houses again take the oaths.[1]

Oaths taken in the absence of the Speaker, in 1855.

On the 5th and 6th June 1855, certain members took the oaths at the table, while the chair was occupied by Mr. FitzRoy, the chairman of ways and means, in the absence of the Speaker, by virtue of recent resolutions, and before an Act had been passed for the performance of the Speaker's duties in his absence; and doubts having been raised as to the validity of oaths administered by the Commons, in the absence of "their Speaker," it was deemed advisable to pass an Act to declare these proceedings to have been as valid as if the Speaker himself had been in the chair.[2]

Queen's speech.

To return to the ordinary business of the session. When the greater part of the members of both houses are sworn, the causes of summons are declared by her Majesty in person, or by commission. This proceeding is, in fact, the true commencement of the session; and in every session but the first of a Parliament, as there is no election of a Speaker, nor any general swearing of members, the session is opened at once by the Queen's speech, without any preliminary proceedings in either house. In the Commons, prayers are said before the Queen's speech, but in the Lords usually not until their second meeting, later in the afternoon.[3] The Speaker, after prayers, sits in the clerk's chair until black rod approaches the door, when he proceeds to his own chair to receive him. This form is observed, because no business can be commenced until Parliament has been opened by the Crown. The house is not counted on this day, as the Queen's message makes a house, as soon as it is capable of sitting.

[1] 6 Anne, c. 7; 37 Geo. III. c. 137; 92 Com. J. 490, &c.

[2] 18 & 19 Vict. c. 33.

[3] When a prince of the blood is to be introduced, prayers are said before the arrival of her Majesty.

When the Queen meets Parliament in person, she proceeds in state to the House of Lords, where, seated on the throne, adorned with her Crown and regal ornaments, and attended by her officers of state, the Prince of Wales (in his robes) sitting in his chair on her Majesty's right hand (all the Lords being in their robes, and standing until her Majesty desires them to be seated), she commands the gentleman usher of the black rod, through the lord great chamberlain, to let the Commons know, "it is her Majesty's pleasure they attend her immediately, in this house." The usher of the black rod goes at once to the door of the House of Commons, which he strikes three times with his rod; and on being admitted, he advances up the middle of the house towards the table, making three obeisances to the chair, and says: "Mr. Speaker, the Queen *commands* this honourable house to attend her Majesty immediately in the House of Peers." He then withdraws, still making obeisances; nor does he turn his back upon the house, until he has reached the bar. The Speaker, with the house, immediately goes up to the bar of the House of Peers;[1] upon which the Queen reads her speech to both houses of Parliament, which is delivered into her hands by the lord chancellor, kneeling upon one knee.

In 1866 and 1867, and again in 1871, 1876, 1877 and 1880, the form of these proceedings was so far changed, that her Majesty's speech, instead of being delivered by herself, was read by her chancellor, taking directions from her Majesty.[2] This was no more, indeed, than the revival of an ancient custom, there being numerous precedents of the lord chancellor or lord keeper addressing both houses, in the presence of the sovereign, and by his command. Henry VIII., proud as he was of his royal state and personal accomplishments, always entrusted to his chancellor the task of addressing

[1] The precedence of members in going to the House of Lords on the opening and prorogation of Parliament by her Majesty, is determined by ballot, in pursuance of resolutions, 7th August 1851; 106 Com. J. 443. 445.

[2] 98 Lords' J. 14, and 5th February 1880.

the Parliaments assembled in his presence.[1] On the 9th November 1605, the chancellor made a speech concerning the recent plot, in the presence of James I.[2] Charles I., who was unduly given to making speeches to his refractory Parliaments, was yet accustomed to make his chancellors, and sometimes other councillors, his spokesmen.[3] In February 1625, he told the Lords and Commons that he did "not love long speeches," and was not "very good to speak much;" he would, therefore, "bring in the old customs which many of his predecessors had used before him, that the lord keeper should tell you at large what I should speak to you in Parliament." Again, in 1627, to use his own words, the lord keeper added a "short paraphrase upon the text he had himself delivered."[4] And the same practice was pursued by Charles II.[5] But the example exactly followed by her Majesty was that of George I., throughout whose reign the royal speech was delivered by the Chancellor.[6]

By commission.

When her Majesty is not personally present, the causes of summons are declared by the lords commissioners. The usher of the black rod is sent, in the same manner, to the Commons, and acquaints the Speaker that the Lords Commissioners *desire* the immediate attendance of this honourable house in the House of Peers, to hear the commission read;[7] and when the Speaker and the house have reached the bar of the House of Peers, the Lord Chancellor reads the royal speech to both houses. Until the end of the session of 1867, the Lords Commissioners' speech was framed as proceeding from themselves; and her Majesty's name was used throughout in the third person. But on

[1] See especially 21st January 1509, 1 Lords' J. 3; 8th June 1536, Ib. 84; 6th January 1541, Ib. 164.

[2] 2 Lords' J. 357.

[3] 3 Ib. 435. 470.

[4] Ib. 637.

[5] 11 Ib. 240. 684. 12 Ib. 287. 652.

[6] 21st March 1714. 20 Lords' J. 22, &c.

[7] On the 19th May 1880, the usher of the black rod having inadvertently used the word "require," attention was called to the informality, when the proper form was explained from the chair. 251 Hans. Deb. 3rd Ser. 1221.

that and subsequent occasions, the speech has been that of the Queen herself, in the first person, and delivered by the Lord Chancellor, or one of the commissioners,[1] by her command.

When the speech has been delivered, either by her Majesty in person, or by commission, the House of Lords is adjourned during pleasure. The Commons retire from the bar, and returning to their own house, pass through it, the mace being placed upon the table by the serjeant; and, as there have generally been new members desiring to be sworn on that day, it has been usual for the house to re-assemble at a quarter before four o'clock.[2]

Report of Queen's speech.

When the houses are resumed in the afternoon, the main business is for the Lord Chancellor in the Lords, and the Speaker in the Commons, to report her Majesty's speech. In the former house, the speech is read first by the Lord Chancellor and then by the clerk, and in the latter by the Speaker, who states that, for greater accuracy, he had obtained a copy. But before this is done, it is the practice, in both houses, to read some bill a first time *pro formâ*, in order to assert their right of deliberating, without reference to the immediate causes of summons. This practice, in the Lords, is enjoined by a Standing Order.[3] In the Commons, the same form is observed by ancient custom only. There is an entry in the Journal of the 22nd March 1603, "That the first day of every sitting, in every Parliament, some one bill, and no more, receiveth a first reading for form sake."[4] And this practice has continued till the present time. By the Lords' Standing Order, it would appear necessary that this

Bill read *pro formâ*.

[1] 97 Lords' J. 639. At the prorogation, 10th August 1872, the Lord Chancellor's sight being impaired, the speech was read by Earl Granville.

[2] Under the recent statute and order of the house (see *supra*, p. 206), the meeting at this hour is no longer necessary, but it has since been observed as the customary hour of meeting.

[3] Lords' S. O. No. 2.

[4] 1 Com. J. 150. See also *supra*, p. 47. Jeremy Bentham condemned this proceeding as an absurd form; Political Tactics, Works, ii. 335.

form should be observed immediately after the oaths have been taken: but in the Commons, the bill is only required to be read before the report of the Queen's speech; and other business is constantly entered upon before the reading of the bill, as the issue of new writs, the consideration of matters of privilege,[1] and questions relating to oaths and affirmations,[2] the presentation of papers, and the usual sessional orders and resolutions.[3] But no questions are asked, or petitions presented. In 1794, Mr. Sheridan raised a debate upon the first reading of the Clandestine Outlawries Bill, and the Speaker decided that he was in order;[4] but such a proceeding is now prohibited by the Standing Orders.

When the royal speech had been read, an address in answer to it is moved in both houses. Two members in each house are selected by the Administration for moving and seconding the address; and they appear, in their places, in levee dress, for that purpose. The address is an answer, paragraph by paragraph, to the Queen's speech. Amendments may be made to any paragraph of the proposed address, in the same form as amendments to other questions;[5] and when the question for an address, whether amended or not, has been agreed to, a committee is appointed in the Commons, "to prepare" or "draw up" an address, who withdraw immediately for that purpose.[6] When the address, Address.

[1] 95 Com. J. 3. See also proceedings on the opening of the session, in 1763, relative to the reading of the bill before the consideration of the question of privilege arising out of the North Briton, No. 45. 15 Parl. Hist. 1354.

[2] Mr. Bradlaugh's affirmation; appointment of committee, 3rd May 1880. 135 Com. J. 124. Mr. Bradlaugh's oath, 7th Feb. 1882. 137 Ib. 3.

[3] 96 Ib. 467; 121 Ib. 10, &c.

[4] 31 Parl. Hist. 994.

[5] 99 Com. J. 6; 103 Ib. 9; 104 Ib. 5; 105 Ib. 6. In 1812, the address was moved as an amendment to a question for an address proposed by Sir F. Burdett. 21 Hans. Deb. 18. 34. Lord Colchester's Diary, ii. 351.

[6] On the 20th January 1881, the report of the address was received and proceeded with on the same day. 136 Com. J. 209; 257 Hans. Deb. 3rd Ser. 1064. And again, on the 1st March 1883, immediately after the address had been agreed to. Votes, 100. Since 1861, the appointment of a Committee to prepare the address has been discontinued in the House of Lords; and the uses of such a Committee are not very apparent.

as drawn up by this committee, is reported, it is brought up and read a first time (short) by direction of the Speaker, and a second time (at length), upon question. Amendments may be proposed to any paragraph, either when the clerk has read such paragraph, or after the second reading of the whole address. But no amendment can be proposed to the address, after the question has been proposed from the chair for agreeing with the committee in the address. After the address has been finally agreed to, it is ordered to be presented to her Majesty. When the speech has been delivered by the Queen in person, and she remains in town, the address is presented by the whole house: but when it has been read by the Lords Commissioners, or the Queen is in the country, the address of the upper house is presented "by the lords with white staves:"[1] and the address of the Commons by "such members of the house as are of her Majesty's most honourable privy council."[2] When the address is to be presented by the whole house, the "lords with white staves" in the one house, and the privy councillors in the other, are ordered "humbly to know her Majesty's pleasure when she will be attended" with the address. Each house meets when it is understood that this ceremony will take place, and, after her Majesty's pleasure has been reported,[3] proceeds separately to the palace. For this purpose, care must be taken to make a house at the proper time: 1st, because it has been ordered that the address shall be presented by the whole house; and, 2ndly, because the house, properly constituted, has to receive her Majesty's pleasure, which can only be communicated to the house at

Presented by the whole house.

[1] Of the royal household.

[2] On the 22nd January 1806, an address in answer to a speech of the Lords' Commissioners, on the battle of Trafalgar, and the death of Nelson, was presented by the whole House. In 1869, both Houses resolved to present their addresses, in answer to a speech delivered by the Lords' Commissioners; and the Queen had arranged to come from Osborne to Buckingham Palace, to receive them; but her Majesty being detained by the illness of Prince Leopold, the orders for the attendance of the Houses were discharged, and the addresses were presented in the usual manner. 124 Com. J. 32. 37. 42.

[3] 74 Lords' J. 10; 96 Com. J. 11; 101 Ib. 10; 111 Ib. 184, &c.

large. From a neglect of this precaution, her Majesty was kept waiting by the Commons, for upwards of half an hour, on the 6th February 1845. If before the presentation of the address, by the whole house, any circumstance should be communicated which would make it inconvenient for her Majesty to receive the house, the address is presented by the "lords with white staves" and privy councillors, as was done on the 3rd February 1844.[1] The proceedings upon addresses need not be pursued any further, as they will be described more fully in a separate chapter.[2]

In case the debate upon the address in answer to the Queen's speech should be adjourned, all the bills, of which notice has been given, may be introduced. In February 1880, and again in 1881, 1882 and 1883, the debate upon the address having been adjourned, the several bills, of which notice had been given, were brought in, and ordered to be read a second time, as if the address had been agreed to.[3]

Places in the House of Lords.

In the upper house, "the lords are to sit in the same order as is prescribed by the Act of Parliament, except that the Lord Chancellor sitteth on the woolsack as Speaker to the house."[4] But this order is not usually observed with any strictness. The bishops always sit together in the upper part of the house, on the right hand of the throne: but the lords temporal are too much distributed by their offices, by political divisions, and by the part they take in debate, to be able to sit according to their rank and precedence. The members of the administration sit on the front bench, on the right hand of the woolsack, adjoining the bishops; and the peers, who usually vote with them, occupy the other benches on that side of the house. The peers in opposition are ranged on the opposite side of the house; while many who desire to

[1] 99 Com. J. 12.
[2] Chapter XVII.
[3] 135 Com. J. 12, &c.
[4] Lords' S. O. No. 4; 31 Hen. VIII. c. 10. By this statute the precedence of princes of the blood royal, and of the bishops, peers, and high officers of state, is defined. See also 1 Will. & Mary, c. 21, s. 2; 5 Ann. c. 8; 10 Ann. c. 4.

maintain a political neutrality, sit upon the cross benches which are placed between the table and the bar. The Standing Order, however, is occasionally enforced. On the 20th January 1740, the Roll of Standing Orders was read, and the lords present took their due places;[1] and again on the 1st February 1771.[2] On the 10th February 1740, "it was insisted that the Lords should take their due places, and the Act 31 Hen. VIII., 'for placing of the lords,' being read, it was moved that the house be called over, but this motion was negatived;"[3] and on the 4th December 1741, "it was insisted on, that the lords should take their due places."[4] On the 22nd April 1831, notice being taken that peers were not seated in their proper places, a debate to order arose, but the Standing Order was not read or enforced.[5] On the 22nd January 1740, it was agreed by the house that the end of the lowest cross bench, next the bishop's bench, is the place of the junior baron.[6]

Ancient baronies.

If the eldest son of a peer be summoned to Parliament by the style of an ancient barony held by his father, he takes precedence amongst the peers according to the antiquity of his barony; whereas if he be created by patent a baron, by a new style or title, he ranks as junior baron.[7]

Places in the Commons.

In the Commons no places are particularly allotted to members: but it is the custom for the front bench, on the right hand of the chair, to be appropriated for the members of the Administration, which is called the Treasury, or privy councillors' bench. The front bench on the opposite side is also usually reserved for the leading members of the Opposition who have served in high offices of state; but other members occasionally sit there, especially when they have any motion to offer to the house. And on the opening of a

[1] 25 Lords' J. 572.
[2] 33 Ib. 47.
[3] 25 Ib. 593.
[4] 26 Ib. 9.
[5] 69 Hans. Deb. 3rd Ser. 1806.
[6] 25 Lords' J. 575.
[7] Baron Mowbray, eldest son of Duke of Norfolk, 32 Chas. II., was summoned by writ, and sat as premier baron, West, Inq. 49; and Lord Stanley, in 1845, 77 Lords' J. 18.

new Parliament, the members for the city of London[1] claim, and generally exercise, the privilege of sitting on the Treasury or privy councillors' bench. It is understood that members who have received the thanks of the house in their places, are entitled, by courtesy, to keep the same places during the Parliament;[2] and it is not uncommon for old members, who are constantly in the habit of attending in one place, to be allowed to occupy it without disturbance.

Secured at prayers.

All other members who enjoy no place by courtesy, upon any of these grounds, can only secure a place for the debate by being present at prayers. On the back of each seat there is a brass plate, in which a member may put a card[3] with his name, if he be at prayers: but by a Standing Order of the 5th April 1835, "No member's name may be affixed to any seat in the house before the hour of prayers."[4] Attempts having been made to evade this order, by placing cards on the seats before prayers, they were brought to the notice of the house 20th April 1866; and the practice was discontinued by order of the Speaker to the serjeant.[5] But another practice has since acquired recognition, by which members, being within the precincts of the house, are allowed to leave their hats upon particular seats, in order to retain them until they acquire a right to them by subsequent attendance at prayers.[6] On the 4th June 1880, the Speaker explained that when members secured places, before prayers, by leaving their hats, it is assumed that they are in immediate attendance upon the house or a committee. No seat could be secured by a card, paper, or gloves.[7]

Places secured at prayers may be retained until the rising

[1] In 1628, a question was raised whether the members for the city of London were "knights;" but there appears to have been no decision. Com. J. 894.

[2] 2 Hatsell, 94.

[3] Cards, with the words "at prayers" printed on them, are always put upon the table for the convenience of members.

[4] 90 Com. J. 202. See also 22 Ib. 406. 414.

[5] 182 Hans. Deb. 3rd Ser. 1765.

[6] See 20th June 1867; 188 Ib. 163; 2nd April 1868; 191 Ib. 698.

[7] 252 Hans. Deb. 3rd Ser. 1200.

of the house.[1] Prior to 1855, the claim to a seat was superseded by a division, or by the members attending the Speaker to the House of Lords, when there was a commission for giving the royal assent to bills. Disputes sometimes arise when members leave their seats for a short time, and on returning, find them occupied by others. On the 14th April 1842, Mr. Speaker thus explained the rule of the house upon this point:—

"A member having been present at prayers, and having put a card at the back of his seat, is entitled to it for the whole night." "But should a member who had not been present at prayers, leave his seat, there is no rule of the house which gives him a claim to return to it; but by courtesy it is usual to permit a member to secure it in his absence, by a book, glove, or hat."

Service of Parliament.

Every member of the Parliament is under a constitutional obligation to attend the service of the house to which he belongs. A member of the upper house has the privilege of serving by proxy, by virtue of a royal license which authorises him to be personally absent, and to appoint another lord of Parliament as his proxy;[2] but since 1868, the use of this privilege has been discontinued. In the House of Commons, the personal service of every member is required. By the 5 Rich. II. c. 4, "if any person summoned to Parliament do absent himself, and come not at the said summons (except he may reasonably and honestly excuse himself to our lord the king), he shall be amerced, or otherwise punished according as of old times hath been used to be done within the said realm, in the said case." And by an Act, 6 Hen. VIII. c. 16, it was declared that no member should absent himself "without the license of the Speaker and Commons, which license was ordered to be entered of record in the book of the clerk of the Parliaments, appointed for the Commons' House." The

[1] Resolution 29th March 1855, made a Standing Order 29th April 1858.

[2] During the king's illness in 1811, it was doubtful whether proxies were admissible. See 18 Hans. Deb. 976. See also further concerning proxies, Chapter XII. on Divisions.

penalty upon a member for absence was the forfeiture of his wages; and although that penalty is no longer applicable, the legislative declaration of the duty of a member remains upon the statute-book. In 1554, informations were filed in the Court of Queen's Bench against several members who had seceded from Parliament, of whom six submitted to fines.[1] And numerous orders are to be found in the Journals, for summoning absent members to attend the service of the house.[2]

Attendance of members.

On ordinary occasions, however, the attendance of members upon their service in Parliament, is not enforced by any orders or regulations: but when any special business is about to be undertaken, means are taken to secure their presence. In the upper house, the most common mode of obtaining a larger attendance than usual, is to order the lords to be summoned; upon which a notice is sent to each lord who is known to be in town, to acquaint him "that all the lords are summoned to attend the service of the house" on a particular day. No notice is taken of the absence of lords who do not appear: but the name of every lord who is present during the sitting of the house, is taken down each day by the clerk of the house, and entered in the Journal.

Lords summoned.

Call of the House of Lords.

When any urgent business is deemed to require the attendance of the lords, it has been usual to order the house to be called over; and this order has sometimes been enforced by fines and imprisonment upon absent lords.[3] On some occasions the lord chancellor has addressed letters to all the peers, desiring their attendance, as on the illness of George the Third, 1st November 1810.[4] The most important occasion on which the house was called over in modern times, was

[1] 1 Parl. Hist. 625.

[2] 15th August 1643; 3 Com. J. 206; 6th February 1688; 10 Ib. 20; 15th March 1715; 18 Ib. 401; 17th December 1783; 39 Ib. 841; 18th April 1785, &c.

[3] 16 Lords' J. 16. 26. 31. 40, &c. All the cases in which this order has been enforced, and the various modes of enforcement, are collected in the 53rd volume of the Lords' Journals, p. 356 *et seq.*

[4] 18 Hans. Deb. 1.

in 1820, when the bill for the degradation of Queen Caroline was pending. The house then resolved,—

"That no lord do absent himself on pain of incurring a fine of 100*l.* for each day's absence, pending the three first days of such proceedings, and of 50*l.* for each subsequent day's absence from the same; and in default of payment, of being taken into custody. That no excuses be admitted, save disability from age, being 70 and upwards, or from sickness, or of being abroad, or out of Great Britain on public service, or on account of the death of a parent, wife, or child. That every peer absenting himself from age or sickness do address a letter to the lord chancellor, stating, upon his honour, that he is so disabled; and that the lord chancellor do write a letter to the several peers and prelates with these resolutions."[1]

Order in which the peers are called.

The lords were accordingly called over by the clerk on each day during the pendency of that bill, beginning, according to ancient custom, with the junior baron. The custom of beginning with the junior baron applies to every occasion upon which the whole house is called over for any purpose, within the house, or for the purpose of proceeding to Westminster Hall, or upon any public solemnity. But when the house appoints a Select Committee, the lords appointed to serve upon it are named in the order of their rank, beginning with the highest; and in the same manner, when a committee is sent to a conference with the Commons, the lord highest in rank is called first, and the other lords follow in the order of their rank.

Call of the House of Commons.

When the House of Commons is ordered to be called over, it is usual to name a day which will enable the members to attend from all parts of the country. The interval, however, between the order and the call has varied from one day[2] to six weeks.[3] If it be really intended to enforce the call, not less than a week or ten days should intervene between the order and the day named for the call. The order for the house to be called over is always accompanied by a resolution, that such members as shall not then attend, be sent for, in

[1] 53 Lords' J. 364. [2] 87 Com. J. 311. [3] 77 Ib. 101.

custody of the serjeant-at-arms." And it was formerly the custom to desire Mr. Speaker to write to all the sheriffs, to summon the members to attend.[1] On the day appointed for the call, the order of the day is read and proceeded with, postponed, or discharged, at the pleasure of the house. If proceeded with, the names are called over from the Return Book, according to the counties, which are arranged alphabetically. The members for a county are called first, and then the members for every city or borough within that county.[2] The counties in England and Wales are called first, and those of Scotland and Ireland in their order. This point is mentioned, because it makes a material difference in the time at which a member is required to be in his place. The Return Book is corrected from time to time: but unless a member, returned after a general election, has produced the certificate of his return (which is delivered at the table when he comes to be sworn), his name will not be entered in the Return Book, and will not therefore be called, at the call of the house.[3] On the 10th May 1858, Baron Rothschild having been returned upon a new writ, and not having brought up the certificate of his return, the certificate from the clerk of the crown was ordered to be read, before a motion was made for adding Baron Rothschild to a committee.[4]

Order in which names are called.

The names of members who do not answer when called, are taken down by the clerk of the house, and are afterwards called over again. If they appear in their places at this time, or in the course of the evening, it is usual to excuse

When members are absent.

[1] 12 Com. J. 552; 16 Ib. 565; 17 Ib. 184, &c.

[2] Who is senior member for a place? He who has sat longest in the house, or he who was returned at the head of the poll? This question arose in 1866, between the Lord Advocate (Mr. Moncrieff) and Mr. M'Laren, members for Edinburgh; and also between Mr. Hastings Russell and Colonel Gilpin, members for Bedfordshire. In each case the junior member, in point of service, being returned at the head of the poll, was entered first in the Return Book. Earl Russell and the Speaker concurred in opinion that the member who stands first in the Return Book must be accounted the senior member.—*Mr. Speaker's Note-book.*

[3] See Sir R. Peel's Mem. vol. ii. 134 (Clare Election).

[4] 113 Com. J. 162.

them for their previous default;[1] but if they do not appear, and no excuse is offered for them, they are ordered to attend on a future day.[2] It is also customary to excuse them if they attend on that day, or if a reasonable excuse be then offered; as, that they were detained by their own illness,[3] or by the illness or death of near relations;[4] by public service,[5] or being abroad.[6] If a member should not attend, and no excuse is offered, he is liable to be committed to the custody of the serjeant-at-arms, and to the payment of the fees incident to that commitment.[7] But, instead of committing the defaulters, the house sometimes names another day for their attendance,[8] or orders their names to be taken down.[9] In earlier times it was customary for the house to inflict fines upon defaulters, as well as other punishments.[10] But in later years calls were enforced less strictly. The attendance of members is generally ample; and a call is of little avail in taking the sense of the house, as there is no compulsory process by which members can be obliged to vote.[11] Hence calls of the house have long since ceased to find favour; and no call of the house has been enforced since 1836.[12] On several subsequent occasions calls of the house have been ordered;[13] but in every case the order was subsequently discharged. On the 10th July 1855,[14] and again, on the 23rd March 1882, motions for a call of the house were negatived.[15]

Leave of absence.

On the 3rd March 1801, when a call of the house was

[1] 80 Com. J. 147
[2] 84 Ib. 106.
[3] 80 Ib. 130.
[4] Ib.
[5] Ib.
[6] 91 Ib. 278.
[7] 80 Ib. 150. 153. 157.
[8] 91 Ib. 278.
[9] 90 Ib. 132.
[10] 1 Ib. 300. 862; 2 Ib. 294; 9 Ib. 75.
[11] See Hans. Deb. 19th and 22nd Nov. 1852, 123, N. S., 266. 302.
[12] Mr. Whittle Harvey's motion on the Pension List, April 19th 1836; 91 Com. J. 265.
[13] 22nd Feb. 1838, 93 Ib. 300; Repeal of the Corn Laws, 15th Mar. 1839, 94 Ib. 121; National Education, 4th June 1839, 94 Ib. 302; 24th March 1840, 95 Ib. 207; Repeal of the Corn Laws, 19th Nov. 1852, 108 Ib. 53.
[14] 110 Com. J. 367; 205 Hans. Deb. 3rd Ser. 746.
[15] 137 Com. J. 117.

deferred for a fortnight, it was ordered, "that no member do presume to go out of town without leave of the house."[1] And, in the absence of any specific orders to that effect, members are presumed to be in attendance upon their service in Parliament. When they desire to remain in the country, they should apply to the house for "leave of absence;" for which sufficient reasons must be given; as, that they are about to attend the assizes, or sessions, or to go circuits; or that they desire to be absent on account of urgent business, the illness or death of near relations, domestic affliction, illness in their families, or their own ill-health. Upon these and other grounds, leave of absence is generally given, but has been occasionally refused.[2] Sometimes leave of absence to a member has been enlarged.[3] A member will forfeit his leave of absence, if he should attend the service of the house before its expiration.

Obligation to attend committees.

Attendance upon the service of Parliament includes the obligation to fulfil all the duties imposed upon members by the orders and regulations of the house. And unless leave of absence has been obtained, a member cannot excuse himself from serving upon committees to which he may be appointed; or for not attending them, where his attendance is made compulsory by the orders of the house.[4] In 1846, Mr. W. Smith O'Brien declined serving as a selected member of a railway committee, and the Committee of Selection, not being satisfied with his excuses, nominated him to a committee, in the usual manner. He did not attend the committee, and his absence being reported to the house, he was ordered to attend the committee on the following day. Being again absent, and his absence being reported to the house, he attended in his place, and stated that he adhered to his determination not to attend the committee; upon which

[1] 56 Com. J. 103.

[2] 75 Ib. 338; 82 Ib. 376; 86 Ib. 863.

[3] 126 Ib. 266; 127 Ib. 96.

[4] See Debates on the absence of Lord Gardner from a private bill committee in the House of Lords, 24th and 26th June 1845. 81 Hans. Deb. 3rd Ser. 1104. 1190.

he was declared guilty of a contempt, and committed to the custody of the serjeant-at-arms.[1]

Time of meeting.

The Lords have usually met, for despatch of legislative business, at five o'clock in the afternoon: but, on the 24th March 1882, they resolved to meet at a quarter past four instead of at five, in order to extend the time for debate before the dinner hour, and to encourage young peers to take part in the discussion of public affairs;[2] and this arrangement has since been continued. The Commons ordinarily meet at a quarter before four, except on Wednesday, and on other days specially appointed for morning sittings. The sittings were formerly held at an early hour in the morning, generally at eight o'clock,[3] but often even at six or seven o'clock,[4] and continued till eleven, the committees being appointed to sit in the afternoon. In the time of Charles II. nine o'clock was the usual hour for commencing public business, and four o'clock for disposing of it. At a later period ten o'clock was the ordinary time of meeting; and the practice of nominally adjourning the house until that hour continued until 1806, though so early a meeting had long been discontinued. According to the present practice, no hour is named by the house for its next meeting, but it is announced in the Votes and Proceedings, at what hour Mr. Speaker will take the chair. Occasionally the house has adjourned to a later hour than four, as on the opening of the Great Exhibition, 1st May 1851, to six o'clock;[5] on the naval review at Spithead, 11th August 1853, to ten o'clock at night;[6] and on Thursday, 11th May 1882, the house met at nine o'clock, in order to enable ministers and members to attend the funeral of Lord Frederick Cavendish, at Chatsworth.

[1] 101 Com. J. 566. 582. 603; and Special Rep. of Committee of Selection, 24th April 1846; Ib. 555. See also case of Mr. Hennessy, March 1860; 115 Com. J. 106; 156 Hans. Deb. 3rd Ser. 2047.

[2] 267 Hans. Deb. 3rd Ser. 1784.

[3] Vowel's Order and Usage of the Parliaments in England, 1572.

[4] 1 Com. J. 156. 705; 2 Ib. 116. 120; 8 Ib. 271; 9 Ib. 606; 13 Ib. 858.

[5] 106 Ib. 189.

[6] 108 Ib. 816.

To facilitate the attendance of members without interruption, both houses order, at the commencement of each session,— Obstructions in the streets, &c.

"That the commissioners of the police of the metropolis do take care that, during the session of Parliament, the passages through the streets leading to this house be kept free and open, and that no obstruction be permitted to hinder the passage of the lords (or members) to and from this house; and that no disorder be allowed in Westminster Hall, or in the passages leading to this house, during the sitting of Parliament; and that there be no annoyance therein or thereabouts; and that the gentleman usher of the black rod (or the serjeant-at-arms) attending this house do communicate this order to the commissioners aforesaid."

And on various occasions, when tumultuous assemblages of people have obstructed the thoroughfares, lobby, or passages, orders have been given to the local authorities, to disperse them.[1] Tumultuous assemblages.

The upper house may proceed with business if only three lords be present, of whom one may be a lord attending to take the oath: but the Commons require as many as forty, including the Speaker, to enable them to sit. This rule, however, which appears to have been first established in 1640,[2] is only one of usage, and may be altered at pleasure. On the 1st March 1793, the house resolved, that for the purpose of receiving messages from the Lords relating to further proceedings on the trial of Warren Hastings, Mr. Speaker might take the chair and direct the messengers to be called in, although forty members were not present.[3] And such mes- Quorum in Lords and Commons.

[1] 31 Lords' J. 206. 209. 213; 32 Ib. 147. 187; 36 Ib. 142; 11 Com. J. 667; 13 Ib. 230; 17 Ib. 661; 33 Ib. 285; 37 Ib. 901.

[2] 5th January 1640, 2 Com. J. 63. "Forty maketh a House of Commons." Gaudy's Notes of Long Parliament; MSS. Brit. Mus. From an entry, 20th April 1607, it would appear that sixty was not then a sufficient number; 1 Com. J. 364. A motion was made by Mr. Pierrepoint, 18th March 1801, being the first Parliament of the United Kingdom, "That Mr. Speaker do not take the chair until, at least, sixty members are present in the house;" but negatived. 35 Parl. Hist. 1203. In both houses of Congress, and the greater part of the state legislatures of the United States, a majority of the house forms a quorum. Cushing on Legislative Assemblies, 96.

[3] 48 Com. J. 305.

sages were afterwards received when six, three, and even *one* member only were present.[1] In 1833, it was determined that the house should sit from twelve o'clock till three, for private business, and petitions; when it was resolved, that in the morning sittings the house should transact business with only twenty members.[2] Immediately after prayers each day, after Parliament has been opened, the Speaker counts the house from the clerk's chair,[3] and, if forty members be not present, he waits until four o'clock, when, standing on the upper step of the Speaker's chair, he again counts; and, if the proper number have not arrived before he has ceased counting, he adjourns the house, without a question first put, until the following sitting day. The only exception to this rule, is when a message is received from the Queen or the lords commissioners, for the attendance of the Commons in the House of Lords. This proceeding often occurs in the course of a session, for the purpose of giving the royal assent to bills, from time to time; and is held to constitute the house as duly sitting, without the usual number of members. But for that purpose the commission should be appointed before four o'clock; otherwise it is of no avail. On the 3rd June 1856, a commission was appointed for four o'clock. The Speaker counted the house, and waited till past four before he proceeded to count it a second time; when, there being thirty-nine members only, including himself, he declared the house adjourned. When the house meets at an earlier hour than four, the Speaker cannot adjourn the house for want of forty members: but no business is transacted until the proper number are present; and at four o'clock he will adjourn the house.

House counted.

Commission makes a house.

But should be appointed before four o'clock.

After the house has been made, if notice be taken by a member, that forty members are not present, the Speaker immediately counts the house; and when it is before four

House counted out.

[1] 48 Com. J. 310. 660. 804.

[2] 88 Ib. 95.

[3] See *supra*, p. 219. When the Speaker sees a full house, he counts generally with the eye, and not in detail.

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o'clock, business is suspended until the proper number come into their places; but if after four o'clock, the Speaker at once adjourns the house until the following day.[1] The two-minute sand glass is turned, and strangers are required to withdraw from below the bar, before the Speaker begins to count; and thus the same time is given to members to enter the house as in the case of a division. When it appears, on the report of a division, after four o'clock, that forty members are not present, the house is adjourned immediately; but when the house is in committee, and forty members are discovered to be wanting, either upon a division, or upon notice being taken of the fact, the chairman reports the circumstance; when the Speaker again counts the house, and, if forty members be not then present, he adjourns the house forthwith. In the meantime, while the house is being counted, the doors continue open, and members can enter during the whole time occupied by the counting.[2] When these accidents

[1] The importance attached to the hour of four has been said to arise from the provisions of the Acts which required the oaths to be taken between the hours of nine in the morning, and four in the afternoon (2 Hatsell, 90): but is, perhaps, more properly referable to usage; four o'clock having been the customary hour for the rising of the house when those Acts were passed. In all times, the proceedings of the house have been liable to such interruptions from the engagements or recreations of members. Writing of the grave Long Parliament in 1641, Mr. Palgrave relates that, "one day's 'discourse' was stopped because 'the Earl of Strafford came in his barge to the upper house from the Tower, and divers ran to the east windows of the house, who with them sat by, looked out at the said windows, and opened them; and others quitted their seats with noise and tumult;' and another sitting was, in like manner, broken up, in the very crisis of national anxiety, because such members preferred 'the play-houses and bowling alleys' to the Committee of Supply."—Death of the Earl of Strafford, in "Fraser's Magazine," for April 1873, citing D'Ewes Harleian MSS. I have myself seen the benches nearly deserted during a boat race, which could be seen from the same east windows, before the great fire of 1834.

[2] On the 10th June 1874, complaint was made that members had been obstructed on their return to the house during a count. The Speaker said it was the duty of the serjeant to keep free access to the house, and he believed that duty had been properly discharged; 219 Hans. Deb. 3rd Ser. 1301.

happen on Saturday, the Speaker adjourns the house until Monday.[1] A second count will not be allowed, immediately after it has been declared that forty members are present:[2] nor will a count be permitted after a question has been put from the chair,[3] as the division will determine whether forty members be present.

Sittings on Wednesday and Saturday.

Saturday not being an ordinary day of meeting, it was usual, until 1861, at an early hour on Friday, to resolve that the house, at its rising, do adjourn till Monday next, lest the Speaker should be obliged, by the want of members, to adjourn the house till Saturday: but, while the committees of supply and ways and means are open, this adjournment is now effected by Standing Order, unless the house shall otherwise resolve. It is not until the end of a session, or on other exceptional occasions, when there is an unusual pressure of business, that the Commons sit on Saturday;[4] in which case it is usual to resolve on Friday, that the house, at its rising, do adjourn till to-morrow, or to appoint a bill, or other matter, for consideration on that day.[5] Sometimes the hour of meeting is appointed by the order of the house,[6] but more often by the Speaker, twelve o'clock being the customary hour on Saturday.[7] The Lords very rarely sit either on Wednesday or Saturday.[8] On a Wednesday, the Speaker, in the Commons, adjourns the house at six o'clock, without putting any question, by virtue of a Standing Order.[9] Ex-

[1] 78 Com. J. 8.

[2] 24 July 1877; 235 Hans. Deb. 3rd Ser. 1771.

[3] 31 July 1882; 273 Ib. 331.

[4] This holiday is said to have arisen from Sir Robert Walpole's devotion to hunting. 1 Lecky, Hist. of Eighteenth Century, 331.

[5] 25th March 1870; 2nd August 1872; 212 Hans. Deb. 3rd Ser. 1953; 221 Ib. 704; 242 Ib. 1640.

[6] 127 Com. J. 411; 128 Ib. 122.

[7] See Speaker's ruling, 27th February 1880; 250 Hans. Deb. 3rd Ser. 1668.

[8] On Saturday, the 4th April 1829, the debate in the House of Lords, on the second reading of the Catholic Relief Bill, was adjourned from two o'clock in the morning till two o'clock the same afternoon.

[9] See *infra*, p. 282. On Tuesday, 31st July 1877, the house, having met at quarter before four, continued sitting until Wednesday afternoon at quarter past six, a period of

cept on these occasions, the house can only be adjourned by Mr. Speaker, upon question put, and resolved in the affirmative.[1] Sometimes the house resolves that it will, at its rising, on a future day, adjourn to some more distant time, as for the Easter Holidays,[2] or other longer period.[3]

Adjournments from a future day.

It need scarcely be stated that the meeting of either house on a Sunday, is a very rare occurrence. On the demise of the Crown, as already noticed,[4] Parliament has occasionally been assembled on a Sunday. During the Commonwealth period the Commons met, on several occasions, on a Sunday,[5] as well as on Good Friday[6] and Christmas-day.[7] During the mania of the popish plot, also, both houses met occasionally on Sundays.[8] On the 18th May 1794, the debate on the bill for

Occasional sittings on Sunday.

twenty-six and a-half hours, and the longest sitting in the previous history of Parliament. This long sitting was held to overcome an obstructive opposition to the South Africa bill. As there was no adjournment of the house on Tuesday, the twelve o'clock Wednesday sitting, under the Standing Orders, was superseded, and absorbed in the prolonged sitting of the previous day. On Monday, 31st January 1881, the house having met at a quarter before four continued sitting until Wednesday morning at half-past nine,—a continuous sitting of upwards of forty-one and a-half hours, 136 Com. J. 49–51. Among the longest sittings previously on record were the following:—On the 14th February 1764, on Wilkes' case, till half-past seven in the morning; the 17th February 1783, on the address concerning the peace with France, Spain and America, till nearly eight; on the 12th May 1785, on commercial intercourse with Ireland, till after eight; on the 30th March 1810, on the Scheldt expedition, till after seven; and on the 5th April, on the commitment of Sir F. Burdett, till half-past seven; on the 12th July 1831, on the reform bill, till after seven; on the 13th May 1878, until half-past nine; and on the 11th August 1879, to a quarter-past seven.

[1] 9 Com. J. 560.

[2] 3rd April 1871; 126 Com. J. 129; 25th March 1872; 127 Ib. 114.

[3] 17th August 1882, until the 24th October, 137 Ib. 487.

[4] *Supra*, p. 47.

[5] Aug. 8th 1641, to stay the king's journey into Scotland, 2 Com. J. 245; 6th and 13th June 1647 (chiefly for prayer), 5 Ib. 200. 209; 1st August 1647, for secular affairs, 5 Ib. 263; 8th May 1659, for prayers and a sermon, 7 Ib. 646.

[6] 23rd April 1641; 2 Com. J. 126.

[7] In 1689, the House of Commons met on Easter Monday, as the Puritans and Latitudinarians objected to the usual adjournment. 3 Macaulay, Hist. 113. See Com. J. 28th March, 1st April 1689.

[8] 1st December 1678, the House of Commons met to take the oaths of allegiance and supremacy under the Act 30 Car. II., recently passed; 9

securing suspected persons, was not concluded until nearly three o'clock on Sunday morning.[1] The Reform Bill was read a second time by the Commons on Sunday morning, the 18th December 1831.[2] The royal assent was signified to the Habeas Corpus Suspension (Ireland) Act at a quarter before one o'clock on Sunday morning, the 18th February 1866;[3] and on some later occasions, the house has continued its sitting until Sunday morning.[4]

Sunday, the 4th May 1856, having been appointed a day of thanksgiving, in respect of the treaty of peace with Russia, the House of Lords met and proceeded to Westminster Abbey;[5] and the Speaker and the members of the House of Commons met at the house, and thence proceeded to St. Margaret's church to attend divine service; but in the meantime the house had adjourned from Friday till the Monday following.[6]

Days of thanksgiving or fast.

Whenever a day of thanksgiving, or of fast and humiliation, is appointed during the sitting of Parliament, it is customary for both houses to attend divine service; the Lords at Westminster Abbey[7] and the Commons at St. Margaret's church.[8] Each house appoints a preacher: the Lords appoint a bishop,[9] the Commons a dean, a doctor of divinity, or the Speaker's chaplain.[10] On the 31st January 1699, the house resolved, "that for the future no person be recommended to preach before this house, who is under the dignity of a dean in the church, or hath not taken his degree of doctor of divinity."[11] On the 4th June 1762, this resolution was repeated, making an exception, however, in favour of the

Com. J. 551; and again 27th April and 11th May 1679; 9 Ib. 605. 619. On the latter day the Lords also met, 13 Lords' J. 506.

[1] 49 Com. J. 613.

[2] 9 Hans. Deb. 3rd Ser. 546.

[3] 121 Com. J. 89.

[4] 5th July 1879; 134 Com. J. 322; 3rd July 1880; 135 Com. J. 273.

[5] 88 Lords' J. 123.

[6] 111 Com. J. 175.

[7] 88 Lords' J. 123.

[8] 40 Com. J. 305; 57 Ib. 483; 111 Ib. 175, &c. On the 13th February 1801, the Commons went to St. John the Evangelist's church, St. Margaret's being then under repair.

[9] 88 Lords' J. 120.

[10] 92 Com. J. 279; 111 Ib. 177.

[11] 13 Ib. 162.

chaplain of the house;[1] but a bachelor of divinity has also been selected for this honour.[2] It is customary to thank the preacher, and to desire him to print his sermon.[3]

Houses of Parliament go to St. Paul's.

On some occasions of special solemnity, the King and both houses of Parliament have attended divine service at St. Paul's cathedral; as on the King's recovery from his illness in 1789,[4] after the naval victories in 1797,[5] on the conclusion of peace in 1814,[6] and on the recovery of the Prince of Wales, in 1872.[7] In 1852, both houses attended the Duke of Wellington's funeral, at St. Paul's.[8]

Attendance at coronations.

If Parliament be sitting at the time of a coronation, it has been customary for both houses to attend the ceremony in Westminster Abbey; and to make orders concerning such attendance.[9]

Sittings suspended.

The sitting of the house is often suspended, and afterwards resumed without any formal adjournment.[10] The Speaker retires from the house, the mace being left upon the table, and returns at a later hour, when the business proceeds in the accustomed manner without counting the house. When this occurs, there is no entry in the Journal of the circumstance, as technically the house has continued sitting. But when the house meets in the morning, and adjourns to a later hour on the same day, the house is again counted at its second meeting.

Adjournments as a mark of respect to deceased members.

Sometimes an adjournment is agreed to as a mark of respect to a deceased member. On the 15th September 1646, both houses adjourned to mark their sense of the loss of the Earl

[1] 24 Com. J. 272.

[2] Rev. H. Melvill, B.D., 13th Mar. 1855; 110 Com. J. 121.

[3] 88 Lords' J. 124; 98 Com. J. 339.

[4] 23rd April 1789; 38 Lords' J. 397; 44 Com. J. 288.

[5] 53 Ib. 140.

[6] 7th July 1814 (the Prince Regent); 49 Lords' J. 1046; 69 Com. J. 441. After the peace of 1815, no day of thanksgiving was appointed.

[7] 127 Com. J. 52. 61.

[8] 108 Ib. 29. Reports of Committee on the Funeral.

[9] William & Mary, 1689; 10 Com. J. 82, &c.; Anne, 1702; 13 Ib. 851; William IV. 1831; 86 Ib. 793, &c.; Her Majesty, 1838; 93 Com. J. 621, &c.

[10] See *infra*, p. 283.

of Essex.[1] On the 3rd July 1850 an adjournment was agreed to by the Commons, *nem. con.*, as a suitable mode of expressing the grief of the house on hearing of the death of its most distinguished member, Sir Robert Peel;[2] and on the 14th April 1863, the like tribute was paid to the memory of Sir George Cornewall Lewis.[3] On Friday, 31st May 1878, the house adjourned, in the course of a debate, in consequence of the sudden death of one of its members, Mr. Wykeham-Martin, in the Library of the house, where his body was then lying.[4] On Monday, 8th May 1882, the house adjourned, *nem. con.*, at quarter past four, without transacting any public business, on account of the assassination of Lord Frederick Cavendish, Chief Secretary to the Lord Lieutenant of Ireland, and Mr. Burke, Under Secretary, on the previous Saturday in Phœnix Park, Dublin.[5] On the 24th June 1861, the Lords adjourned, *nem. diss.*, on the death of the Lord Chancellor, Lord Campbell.

Royal funerals.

Occasionally the house adjourns on the occasion of royal funerals. The funeral of the Duke of Sussex was appointed for 4th May 1843, and the house adjourned over that day. The Duke of Cambridge was buried on the 16th July 1850, when the house sat from twelve till three, and then adjourned in consequence of the funeral. But on the funeral of the Princess Sophia, 5th June 1848, the house did not adjourn;

[1] 4 Com. J. 670.

[2] 105 Ib. 484. On the 5th July, the French Assembly entered in their Procès Verbal, an expression of regret at the loss of this eminent statesman. 163 Hans. Deb. 3rd Ser. 772.

[3] 14th April 1863. Notwithstanding the universal respect in which Sir G. Lewis was held on both sides of the house, the propriety of this proceeding was questioned, in private, by many eminent statesmen, on the ground of the invidious distinctions which might be drawn between the claims of different members to such an honour, and the contentions likely to arise in times of party excitement.—*Mr. Speaker's Note Book.*

[4] 133 Com. J. 264.

[5] 137 Ib. 185. On the 3rd June 1882, the Italian Chamber of Deputies adjourned until the 12th in consequence of the death of Garibaldi. The Hall was also ordered to be draped in mourning for two months; and other measures were at once voted for doing honour to his memory, for his funeral, and for pensions to his family.

and again, the Duchess of Gloucester was buried on Friday, the 8th May 1857 (the day after the lords commissioners' speech had been delivered), but the house sat on that day as usual; and not without due consideration. The funeral was at Windsor, at twelve; and the house did not meet until a quarter before four.

Ash Wednesday, Ascension-day, &c.

The Lords never sit either on Ash Wednesday or Ascension-day. On Ash Wednesday it is customary for the House of Commons to meet at two o'clock, instead of twelve, in order to give members an opportunity of attending divine service.[1] And on Ascension-day, since 1849,[2] orders were frequently made, for the same purpose, that no committees have leave to sit until two o'clock.[3] But, in 1872, this customary motion was negatived. In 1873, however, a motion restraining committees from sitting until two, but giving them leave to sit until six, was carried by a large majority;[4] and this resolution has since been repeated in every succeeding year. On the 19th March 1866, appointed by the Bishop of London as a day of prayer and humiliation, it was ordered that no committees do meet before one o'clock.

Queen's birthday and other days.

When the Queen's birthday is kept on any day except Saturday, the house has frequently adjourned over that day;[5] and for many years it has been customary to adjourn over the Derby day, though latterly not without a debate and division.[6]

Speaker of the House of Lords.

The duties of the Lord Speaker of the upper house, and of the Speaker of the Commons, will appear in the various

[1] Resolved on division, 25th Feb. 1873.

[2] So far back as 15th May 1604, it "being put to question whether we should sit on Ascension-day," upon division "resolved to sit." But on the 1st June 1614, it was resolved, upon division, not to sit.

[3] 122 Com. J. 255; 125 Ib. 225; 126 Ib. 202. This order was repeated on nine occasions between 1856 and 1871 inclusive.

[4] 20 May 1873.

[5] Tuesday, 24th May 1864; Wednesday, 24th May 1865; Wednesday, 2nd June 1869.

[6] This adjournment was generally moved by the leader of the house from 1856 until 1878, when it was left in the hands of an independent member.

proceedings of both houses, as they are explained in different parts of this work;[1] but a general view of the office is necessary, in this place, for understanding the forms of parliamentary procedure.

His duty to attend.

The lord chancellor, or lord keeper of the great seal of England, is prolocutor or Speaker of the House of Lords, by prescription;[2] and by a Standing Order of the Lords, it is declared to be his duty ordinarily to attend as Speaker: but if he be absent, or if there be none authorized under the great seal to supply that place in the House of Peers, the Lords may choose their own Speaker during that vacancy.[3]

Not necessarily a peer.

It is singular that the president of this deliberative body is not necessarily a member. It has even happened that the lord keeper has officiated, for years, as Speaker, without having been raised to the peerage.[4] On the 22nd November 1830, Mr. Brougham sat on the woolsack as Speaker, being at that time lord chancellor, although his patent of creation as a peer had not yet been made out.[5] On the 4th March 1852, Sir Edward Sugden sat as Speaker, before he was introduced as a peer.[6] On the 26th February 1858, a new writ was issued in the room of Sir Frederick Thesiger, who had accepted the office of lord chancellor;[7] and on the 1st March, before he had been called to the upper house, he sat as Speaker.[8] On the 27th June 1861, Sir Richard

[1] See Index, tit. "SPEAKER."

[2] Lord Ellesmere; Office of Lord Chancellor, Ed. 1651.

[3] Lords' S. O. No. 5. And see observations as to the obligations of the lord chancellor to attend, 23rd August 1831, and 20th June 1834; 6 Hans. Deb. 3rd Series, 453; 7 Ib. 646—662; 24 Ib. 597. 600. 604.

[4] When Sir Robert Henley was keeper of the great seal, and presided in the House of Lords as lord keeper, he could not enter into debate as a chancellor, being a peer, does, and therefore when there was an appeal from his judgments in the Court of Chancery, and the law lords then in the house moved to reverse his judgments . . . . . the lord keeper could not state the grounds of his opinions given in judgment and support his decisions."—Lord Eldon's Anecdote Book, 1 Twiss, Life, 319. 5 Lord Campbell, Lives of Chancellors, 188.

[5] 63 Lords' J. 114.

[6] 84 Ib. 34.

[7] 113 Com. J. 73.

[8] Lords' Minutes, 1858, p. 123.

Bethell, having been appointed chancellor, sat as Speaker, and was introduced, on the same day, as Baron Westbury. On the 10th, 11th, and 15th December 1868, Sir William Page Wood sat as Speaker, and on the latter day was introduced and sworn, as Baron Hatherley. The woolsack, indeed, is not strictly within the house, for the Lords may not speak from that part of the chamber, and if they sit there during a division, their votes are not reckoned.

Great seal in commission.

When the great seal has been in commission, it was usual for the Crown to appoint (if he be a peer) the chief justice of the Court of Queen's Bench, or Common Pleas, the chief baron of the Exchequer, or the Master of the Rolls, to be Lord Speaker.[1] In 1827, Sir John Leach, master of the rolls, and Sir William Alexander, chief baron of the Court of Exchequer,[2] and in 1835, Sir L. Shadwell, vice-chancellor,[3] though not peers, were appointed Lord Speakers, while the great seal was in commission. On the meeting of Parliament in 1819, the lord chancellor being absent, the Prince Regent appointed Sir R. Richards, lord chief baron of the exchequer, to supply his place, as Speaker.[4]

Deputy Speakers.

At all times there are deputy Speakers, appointed by commission to officiate as Speaker, during the absence of the lord chancellor or lord keeper. When the lord chancellor and all the deputy Speakers are absent at the same time, the Lords elect a Speaker *pro tempore*;[5] but he gives place immediately to any of the lords commissioners, on their arrival in the house; who, in their turn, give place to each other according to their precedence, and all at last to the lord chancellor. In 1824, Lord Gifford, chief justice of the

[1] 66 Lords' J. 113; 70 Ib. 42; 82 Ib. 71; 84 Ib. 126.

[2] 59 Ib. 278.

[3] 67 Ib. 291. On the 25th Oct. 1566, Sir R. Cattelyn, C. J. of Q. B., was appointed Lord Speaker, by commission, which appears to be the first instance of a commoner holding that office. 1 Ib. 637.

[4] Ib. 7. This was said to be in accordance with the precedent of Sir Robert Atkins in the reign of King William. Lord Colchester's Diary, iii. 68.

[5] E.g., 24th Feb. 1873, when Lord Chelmsford was chosen Speaker; and on several occasions in 1882.

Common Pleas, was appointed sole deputy Speaker.[1] For several years from 1851, there was only one deputy Speaker in the commission,—the chairman of the Lords' committees; but on the 24th April 1881, the lord chancellor acquainted the house that her Majesty had appointed four peers to be deputy Speakers, in the absence of the lord chancellor and the chairman of committees.[2] On the 6th July 1865, the lord president of the council, being unanimously chosen Lord Speaker *pro tempore*, in the absence of the lord chancellor, and of Lord Redesdale, the deputy Speaker, sat as Lord Speaker, and, as one of the lords commissioners, delivered the royal speech, and prorogued the Parliament.[3]

Duties of Speaker in the Lords.

The duties of the office are thus generally defined by the Standing Orders:—

"The lord chancellor, when he speaks to the house, is always to speak uncovered, and is not to adjourn the house, or to do anything else as mouth of the house, without the consent of the Lords first had, except the ordinary thing about bills, which are of course, wherein the Lords may likewise overrule; as, for preferring one bill before another, and such like; and in case of difference among the Lords, it is to be put to the question; and if the lord chancellor will speak to anything particularly, he is to go to his own place as a peer."[4]

His anomalous position.

The position of the Speaker of the House of Lords is somewhat anomalous; for though he is the president of a deliberative assembly, he is invested with no more authority than any other member; and if not himself a member, his office is limited to the putting of questions, and other formal proceedings. Upon points of order, the Speaker, if a peer, may address the house: but as his opinion is liable to be questioned, like that of any other peer, he does not often exercise his right.[5]

[1] 56 Lords' J. 39. Lord Colchester's Diary, iii. 311.

[2] 267 Hans. Deb. 3rd Ser. 1204.

[3] 97 Lords' J. 639.

[4] Lords' S. O. No. 19. But if lord chancellor, he goes, by virtue of his office, to the left of the chamber above all dukes not being of the blood royal. 31 Hen. VIII. c. 10, s. 4.

[5] See Debate in the Lords, 22nd June 1869, in which it was suggested that the chancellor should be invested with more extended powers: but it

Speaker of the Commons.

The duties of the Speaker of the House of Commons are as various as they are important. He presides over the deliberations of the house, and enforces the observance of all rules for preserving order in its proceedings; he puts every question, and declares the determination of the house. As "mouth of the house," he communicates its resolutions to others, conveys its thanks, and expresses its censure, its reprimands, or its admonitions. He issues warrants to execute the orders of the house for the commitment of offenders, for the issue of writs, for the attendance of witnesses in custody, for the bringing up prisoners in custody, and giving effect to other orders requiring the sanction of a legal form. He is, in fact, the representative of the house itself, in its powers, its proceedings, and its dignity. When he enters or leaves the house, the mace is borne before him by the serjeant-at-arms; when he is in the chair, it is laid upon the table; and at all other times, when the mace is not in the house, it remains with the Speaker, and accompanies him upon all state occasions.

His rank.

In rank, the Speaker takes precedence of all commoners, both by ancient custom and by legislative declaration. The Act 1 Will. & Mary, c. 21, enacts, that the lords commissioners for the great seal "not being peers, shall have and take place next after the peers of this realm, and the Speaker of the House of Commons."[1]

was pointed out, on the other side, by some peers and by the chancellor himself, that as he was a minister of the Crown, not chosen by the house itself, and was often a member of the least experience in the house, he could not properly exercise the same powers as those of the Speaker of the Commons.

[1] See also 2 Hatsell, 249, *n.*; "I had a correspondence with Garter King-at-Arms about the precedence between the Speaker of the House of Commons and a peer of Ireland, whilst a member of the House of Commons, upon any occasion out of Parliament where strict rank was to be observed, such as the signing solemn instruments of state. Garter King-at-Arms inclined strongly to think that such Irish peer would have the precedence, notwithstanding the express words in the Act of Union, as to the loss of privileges." Lord Colchester's Diary, i. 413. At Mr. Pitt's funeral, "My place was after the eldest sons of viscounts, and before barons' sons." Ibid. ii. 40.

Duration of office after dissolution.

By the 2 & 3 Will. IV. c. 105, s. 4, it is provided that, in case of a dissolution, the then Speaker shall be deemed to be the Speaker until a Speaker shall be chosen by the new Parliament; and by the 9 & 10 Vict. c. 77, s. 5, in case of his death, disability, or absence from the realm during any dissolution or prorogation, three of the commissioners of the House of Commons may act for him in regard to the offices of the house.

When absent.

Until 1853, no provision had been made for supplying the place of the Speaker by a deputy Speaker or Speaker *pro tempore*, as in the upper house;[1] and when he was unavoidably absent, no business could be done, but the clerk acquainted the house with the cause of his absence, and put the question for adjournment.[2] Though doubts were formerly entertained whether the house could be adjourned in this manner, otherwise than from day to day, no such limitation was practically observed.[3] When the Speaker was so ill as to be unable to attend for a considerable time, it was necessary to elect another Speaker, with the usual formalties of the permission of the Crown, and the royal approval. On the recovery of the Speaker, the latter would resign, or "fall sick," and the former was re-elected, with a repetition of the same ceremonies.[4]

Chairman of Ways and Means to take the Chair.

In 1853, a committee was appointed to consider the best means of providing for this obvious defect in the constitution of the house, which on the 4th August resulted in the adoption of the following Resolution, the consent of the Crown having been first signified:—

"That whenever the house shall be informed of the unavoidable absence of Mr. Speaker, the chairman of the committee of ways and means do take the chair for that day only; and in the event of Mr. Speaker's absence continuing for more than one day, do if the house shall think fit, and shall so order it, take the chair in like manner, on any subsequent day during such absence."[5]

[1] During the Protectorate, Speakers *pro tempore* were appointed. 7 Com. J. 482, 483. 612. 811.

[2] 83 Ib. 547.

[3] 1 Ib. 353; 25 Ib. 532; 39 Ib. 841; 44 Ib. 45.

[4] 9 Ib. 463. 476; 11 Ib. 271, 272.

[5] 108 Ib. 758. 766.

No provision, however, was made for the execution of any of the duties performed by the Speaker out of the chair,[1] and the arrangements were otherwise inadequate, for meeting the emergencies arising out of the Speaker's absence.

Cases of Speaker's absence.

On the 7th May 1855, this resolution was acted upon for the first time. The Speaker had shown indisposition early in the evening; and afterwards, while the house was in committee of supply, he wrote a letter to the clerk, to inform the house of his unavoidable absence for the remainder of the night and went home. Meanwhile the committee of supply proceeded with its sitting; and as soon as the chairman[2] left the chair of the committee, to report resolutions, the clerk acquainted the house that he had received a letter from Mr. Speaker, which he read to the house. Whereupon Mr. FitzRoy, the chairman of the committee of ways and means, took the chair, the mace was immediately placed upon the table, and the house proceeded with the business of the evening.[3]

Again, on the 4th June 1855, the house met, and the Speaker not being present, no prayers were read.[4] The clerk at the table acquainted the house that he had received a letter from Mr. Speaker, together with a medical certificate, which he read to the house. Whereupon Mr. FitzRoy, the chairman of the committee of ways and means, having counted the house, took the chair. It being afterwards stated that Mr. Speaker's indisposition would probably be of some days' duration, it was ordered, "that in the event of Mr. Speaker's absence continuing for more than this day, Mr. FitzRoy do take the chair on each subsequent day during the present week."[5]

On the 5th, 6th, 7th and 8th June, the Speaker being still

[1] See Report on the Office of Speaker, 1853 (478).

[2] Mr. FitzRoy had given up the chair, before the last vote, to Mr. Bouverie.

[3] 110 Com. J. 210.

[4] The omission of prayers, though consistent with precedent, was unnecessary, and was not afterwards observed.

[5] 110 Com. J. 261. 264.

absent, Mr. FitzRoy again took the chair, pursuant to the resolution of the 4th, prayers being first said, and the house counted, in the usual manner. On the 11th June the Speaker returned, and having thanked the house for their indulgence, called attention to the circumstance that two members had taken the oaths and their seats in his absence, and suggested whether any doubts as to the validity of the oaths should not be removed, which led to the passing of the bill already alluded to.[1]

Deputy Speaker in the Commons.

The imperfection of the arrangements made in 1853 was now too obvious to be overlooked; and, accordingly, the Queen's consent being signified,[2] the following Standing Order was agreed to :—

"That whenever the house shall be informed by the clerk at the table of the unavoidable absence of Mr. Speaker, the chairman of the committee of ways and means do perform the duties and exercise the authority of Speaker, in relation to all proceedings of this house, as deputy Speaker, until the next meeting of the house, and so on from day to day, on the like information being given to the house, until the house shall otherwise order: provided that if the house shall adjourn for more than twenty-four hours, the deputy Speaker shall continue to perform the duties and exercise the authority of Speaker, for twenty-four hours only after such adjournment."

Recognition of deputy Speaker by statute.

An Act was also passed, providing that if in the temporary absence of the Speaker, a deputy Speaker shall perform his duties and exercise his authority, pursuant to the Standing Orders, or other order or resolution, every act done and proceeding taken in or by the house, pursuant to any statute, shall be as valid as if the Speaker himself were in the chair; and every act done by the deputy Speaker shall have the same effect and validity as if it had been done by the Speaker.[3]

[1] See *supra*, p. 219.

[2] 110 Com. J. 395.

[3] 18 & 19 Vict. c. 84. Report on Office of Speaker, 1855. A bill in almost the same terms had been submitted to the committee of 1853, but they were contented to rely upon a resolution of the house. Under this Act, Mr. Massey, acting as deputy Speaker, in May 1861, signed certificates of the withdrawal of the London, Buckinghamshire and West

The Speaker was absent on the 26th April 1861; and again on the 1st, 2nd, and 3rd May 1861, when Mr. Massey, the chairman of the committee of ways and means, officiated as deputy Speaker, pursuant to the Standing Order.[1]

It was not, however, until 1866, that the value and efficiency of this new system were fully tested. In that session, Mr. Speaker being unfortunately disabled by an accident, was absent from Friday the 9th, until Friday the 23rd March, on which latter day the house adjourned for the Easter vacation. On the re-assembling of the house on the 9th April, he resumed the chair, but was obliged to absent himself on this and several other evenings, before the conclusion of the sitting, as well as on the whole of one evening, and three Wednesday sittings, the last of these being on the 25th April. On each of these occasions, on the house being informed of the unavoidable absence of Mr. Speaker, Mr. Dodson, the chairman of ways and means, at once proceeded to act as deputy Speaker, and performed all the duties of Speaker in and out of the chair. On the 20th April, when Mr. Speaker was convalescent, he informed the house that a commission was ordered, and that being disabled from attending with the house in the House of Peers, he should be obliged, by permission of the house, to withdraw before the arrival of black rod. Thereupon the house resolved that

Midland Junction Railway, and of the Ellesmere and Whitchurch Railway, to authorize the repayment of the deposit required by the Standing Orders, pursuant to 9 & 10 Vict. c. 20, s. 5. And in March 1866, Mr. Dodson signed several similar certificates, and warrants for new writs, 121 Com. J. 158.

[1] 116 Ib. 168. 174, &c. The serjeant, accompanied by the chaplain, entered the house with the mace, which he placed upon the table. The clerk informed the house of the Speaker's unavoidable absence, and read a letter from him. Mr. Massey then proceeded to the table, and, after prayers, counted the house and took the chair. On the 2nd May, the principal business being in Committee of Ways and Means, the chairman first took the chair of the house, and then of the committee. It was thought better, however, not to follow the precedent of 1855; and the chairman himself put the question for reporting progress, and then left the house for a time. On returning, he took the chair of the house, and Mr. Peel, the Secretary of the Treasury, reported that the chairman had been directed to report progress.

during his absence, the chairman of ways and means should take the chair as deputy Speaker, and attend with the house in the House of Peers, and report the royal assent to the Acts. On the approach of black rod, Mr. Speaker retired, his place being taken by Mr. Dodson; and when the royal assent to the Acts had been reported, he resumed the chair. This proceeding was resorted to on two other occasions;[1] and since that time, the chairman of ways and means has repeatedly taken the chair in the absence of the Speaker.[2] On the 20th June 1870, the Speaker asked the indulgence of the house to enable him to receive the degree of D.C.L. at Oxford, when the chairman of ways and means was ordered to take the chair, as deputy Speaker, during his temporary absence.[3]

Speaker resumes the chair during the same sitting.

On the 31st January 1881, during a protracted sitting, the Speaker retired, and after some time the clerk informed the house of his unavoidable absence. Mr. Playfair, the chairman of ways and means, now took the chair, which, after several hours, was resumed by the Speaker. Objection was immediately taken that the Speaker, having once left the chair, was, according to the terms of the Standing Order, unable to resume it until the following day; but

"Mr. Speaker ruled that this Standing Order is enabling only, and provides for the appointment and duties of the deputy Speaker, during the unavoidable absence of the Speaker. If that absence should continue until the sitting of the house is closed, it provides for the execution of his duties until its next sitting; but it does not assume to restrain the inherent authority of the Speaker himself, in the event of his resuming the chair, while the house is still sitting. In that case his unavoidable absence is at an end: he is in the chair again, and exercises the authority of his office. Mr. Speaker, under the present circumstances, did not consider that the Standing Order had any application."

When the debate had further continued for many hours, the Speaker was again replaced by the chairman of ways and

[1] 121 Com. J. 234. 239. 261. 331.
[2] 125 Ib. 356; 126 Ib. 309; 131 Ib. 355; 16th Feb. 1880; 26th June and 28th and 29th Nov. 1882.
[3] 125 Ib. 265.

means; but resumed the chair in the morning, and occupied it until the close of the debate.[1]

Office of Speaker in the two houses.

Formerly the difference in the constitution of the office of Speaker in the two houses had an important influence upon the power of each house in regard to its own sittings. In the upper house the Speaker may leave the woolsack, but his place is immediately supplied by another Speaker, and the proceedings of the house are not suspended. Thus, on the 22nd April 1831, when the king was approaching to prorogue Parliament, the lord chancellor suddenly left the woolsack to attend his Majesty, upon which Lord Shaftesbury was appointed Speaker *pro tempore*, and the debate, which had been interrupted for a time, proceeded until his Majesty entered the house.[2] But in the Commons, before these recent arrangements, if the Speaker was absent, the house was powerless, except for the purpose of adjournment. This general description of the office of Speaker, in both houses, leads to a brief notice of the principal officers whose duties are immediately connected with the proceedings of Parliament.

Assistants of the Lords.

The assistants of the House of Lords were, according to ancient custom, the judges of the Courts of Queen's Bench and Common Pleas, and such barons of the Exchequer as were of the degree of the coif, the master of the rolls, the attorney and solicitor-general, and the Queen's serjeants. They were summoned, at the beginning of every Parliament, by writs under the great seal, to be "personally present in Parliament, with us and with others of our council to treat and give advice."[3] They were present in the ancient concilium regis, either as members of that high court, or as assistants; and their presence has been continued, in different forms, until this day. But since the Judicature Acts, the ancient titles of the judges have been changed, the degree of the coif has been discontinued, and Queen's serjeants are no longer

[1] 136 Com. J. 50; 257 Hans. Deb. 3rd Ser. 1707.

[2] 63 Lords' J. 511; 80 Ib. 10. Hans. Deb. 22nd April 1831.

[3] Macqueen, 36, *n.*

appointed. The judges, as assistants of the Lords, held a more important place in Parliament, in ancient times, than that which is now assigned to them, having had a voice of suffrage, as well as a voice of advice.[1] When the petitions of the Commons and the answers of the king were drawn up into the form of statutes after the session, the judges, if not regarded as legislators themselves, were at least concerned in an important part of legislation. They were also occasionally made joint committees with the Lords of Parliament, a practice which continued until the latter end of the reign of Queen Elizabeth.[2] Their attendance was formerly enforced on all occasions, but they are now summoned by a special order, when their advice is required. Their place is on the woolsacks, and they

"are not to be covered until the Lords give them leave, which they ordinarily signify by the lord chancellor; and they being then appointed to attend the house, are not to speak or deliver any opinion until it be required, and they be admitted so to do by the major part of the house, in case of difference."[3]

Scotch judges.

After the union with Scotland, it became a question in what manner the Scotch judges should be received by the house, when called upon to deliver their opinions. On the 29th April 1737, the lord justice clerk and the other judges of the Court of Justiciary having been ordered to attend, it was referred to a committee of the whole house to consider in what places they should be heard. This committee reported that they should be heard at the bar, to which the house agreed, though not without objection; and chairs were ordered to be set for them at the bar.[4] The question was again raised in 1807, and a committee appointed to search for precedents: but the house adhered to the previous practice, ordering

[1] Hale, Hist. of H. of Lords. Intro. to Sugden's Law of Real Property, 2. See also Lord Lyndhurst's speech, 23rd June 1851; 117 Hans. Deb. 3rd Ser. 1069.

[2] 1 Lords' J. 586. 606, 26th Jan., 20th March 1563. West, Inq. 48.

[3] Lords' S. O. No. 6.

[4] 25 Lords' J. 99, 100.

chairs to be placed for the judges below the bar, and desiring them to be seated.[1]

The masters in ordinary in chancery also, until the abolition of their offices, attended in the House of Lords as attendants, and were usually employed in carrying bills and messages to the House of Commons.[2] They were not summoned by writ, but one of them attended each day, by rotation.[3] Like the assistants, they also sat upon the woolsacks, but were never covered.[4] Attendants.

The chief officers of the upper house are the clerk of the Parliaments,[5] the gentleman usher of the black rod, the clerk assistant, and the serjeant-at-arms. The clerk of the Parliaments is appointed by the Crown, by letters patent. On entering office, he makes a declaration[6] at the table, before the lord chancellor, to make true entries and records of the things done and passed in the "Parliaments, and to keep secret all such matters as shall be treated" therein, "and not disclose the same before they shall be published, but to such as it ought to be disclosed unto."[7] The clerk assistant and the reading clerk are appointed by the Lord Chancellor, the appointments being subject to the approbation of the house.[8] They attend at the table, with the clerk, and take minutes of all the proceedings, orders, and judgments of the house. These have been published daily since 1824[9] as the "Minutes of the Proceedings," and they are printed, in a corrected and enlarged form, as the Lords Journals, after being examined "by the sub-committees for privileges and perusal of the Journal Book."[10] Chief officers of the Lords. Lords' Minutes and Journals.

[1] 46 Lords' J. 172. 189.

[2] See Chapters XVI. and XVIII. By Act 15 & 16 Vict. c. 80, the office of master in ordinary was abolished, subject to a temporary performance of duties by certain of the present masters.

[3] Macqueen, 66.

[4] Lords' S. O. No. 7.

[5] Until 1855, this office had been executed by the clerk assistant, who on the death of Sir George Rose, succeeded to his office, pursuant to the Act 5 Geo. IV. c. 82; 87 Lords' J. 243.

[6] By Promissory Oaths Act, 1868.

[7] 87 Lords' J. 44.

[8] 5 Geo. IV. c. 82, s. 3.

[9] 56 Lords' J. 369 *a*.

[10] 84 Ib. 91. Lords' S. O. No. 51. Since 1860, the Lords' Minutes have

Black rod.

The gentleman usher of the black rod is appointed by letters patent from the Crown, and he, or his deputy, the yeoman usher, is sent to desire the attendance of the Commons in the House of Peers, at the opening and proroguing of Parliament, when the royal assent is given to bills by the Queen or the lords commissioners, and on other occasions. He executes orders for the commitment of parties guilty of breaches of privilege and contempt, and assists at the introduction of peers, and other ceremonies.[1]

Serjeant-at-arms.

The serjeant-at-arms is also appointed by the Crown. He attends the lord chancellor with the mace, and executes the orders of the house for the attachment of delinquents, when they are in the country. He is, however, the officer of the lord chancellor, rather than of the house.

Chief officers of the Commons.

Clerk of the House.

The chief officers of the House of Commons are, the clerk of the house, the serjeant-at-arms, the clerk assistant, and second clerk assistant. The clerk of the house is appointed by the Crown, for life, by letters patent, in which he is styled "Under clerk of the Parliaments, to attend upon the Commons."[2] He makes a declaration[3] before the lord chancellor, on entering upon his office, "to make true entries, remembrances, and journals of the things done and passed in the House of Commons." He signs all orders of the house, endorses the bills sent or returned to the lords, and reads whatever is required to be read in the house. He has the custody of all records or other documents,[4] and is responsible

been laid daily on the table of the House of Commons; 149 Hans. Deb. 3rd Ser. 856.

[1] In 1878, the committee on the office of the Clerk of the Parliaments, &c., reported that "it is the duty of the Lord Great Chamberlain, with the assistance of the Gentleman Usher of the Black Rod, to receive sovereigns, princes and royal personages visiting the House of Lords, during the sitting of the house for business, and to give the necessary directions to the doorkeepers and police on such occasions." First Rep. of Committee.

[2] 2 Hatsell, 255. London Gazette, 1st October 1850; 3rd February 1871. See also 3 Com. J. 54. 57.

[3] Substituted for an oath, by the Promissory Oaths Act, 1868.

[4] 1 Com. J. 306; 6 Ib. 542; 17 Ib. 724, &c.

for the regulation of all matters connected with the business of the house, in the several official departments under his control. He also assists the Speaker, and advises members, in regard to questions of order and the proceedings of the house. The clerks assistant are appointed by the Crown, under the sign manual, on the recommendation of the Speaker, and are removable only upon an address of the House of Commons.[1] They sit at the table of the house, on the left hand of the clerk.

Votes and Proceedings, and Journals.

The short entries of the proceedings of the house, which are made by the clerks at the table, have, since 1817, been printed and distributed every day, and are entitled, the "Votes and Proceedings."[2] From these the Journal is afterwards prepared, in which the entries are made at greater length, and with the forms more distinctly pointed out. These records are confined to the votes and proceedings of the house, without any reference to the debates. The earlier volumes of the Journals contain short notes of speeches, which the clerk had made, without the authority of the house:[3] but all the later volumes record nothing but the *res gestæ*. It was formerly the practice for a committee "to survey the clerk's book every Saturday,"[4] and to be entrusted with a certain discretion in revising the entries:[5] but now the votes are prepared on the responsibility of the clerk; and after "being first perused by Mr. Speaker,"[6] are printed for the use of members, and for general circulation. But no person may print them, who is not authorised by the Speaker.

Lords' Journals.

A few words may here be interposed in regard to the legal character of the Journals of the two houses. The Journals

[1] 19 & 20 Vict. c. 1; Treasury Minute, 1856 (Sess. Paper, No. 132).

[2] They had been printed, with some interruptions, since 1680.

[3] 1 Com. J. 885; 2 Ib. 12. 42. For a history of the early Journals, see 24 Com. J. 262.

[4] 1 Ib. 673.

[5] 1 Ib. 676. 683; 2 Ib. 42.

[6] Sess. order since 1680. 9 Com. J. 643. In 1866, the old form of Latin dates prefixed to the Votes and Journals of each day's proceedings was discontinued, by order of Mr. Speaker.

of the House of Lords[1] have always been held to be public records. They were formerly "recorded every day on rolls of parchment," and in 1621 it was ordered that the Journals of the House of Commons "shall be reviewed and recorded on rolls of parchment." But this practice has long since been discontinued by the Lords, and does not appear to have been adopted by the Commons.[2] All persons may have access to the Commons' Journals, in the same manner as to the Journals of the other house.

Commons' Journals.

The Journals of the House of Commons,[3] however, are not regarded as records,[4] although their claim to that character is upheld by weighty considerations. Sir Edward Coke speaks of "the book of the clerk of the House of Commons, which is a record, as it is affirmed by Act of Parliament, in anno 6 Hen. VIII. c. 16."[5] This is the statute already alluded to, which prohibits the departure of any member of the House of Commons "except he have license," &c.; "and the same license be *entered of record* in the book of the clerk of the Parliament, appointed or to be appointed for the Commons' House." This entry was obviously intended to be a legal record, to be given in evidence in any claim for wages, from the payment of which the counties, cities, and boroughs were discharged, in case of the unauthorized departure of their members. The Clerk's Book and the Journals were unquestionably the same, and the latter are still prepared from the former. A license was granted by a

[1] Before the commencement of the Lords' Journals, the proceedings of Parliament were recorded in the Rolls of Parliament, A.D. 1278–1503, 6 Edward I. to 19 Henry VII. The Lords' Journals commence in 1509, 1 Henry VIII.

[2] 2 Oxford Debs. 22. 1 Com. J. 608. 3 Hatsell, 37.

[3] The Journals of the Commons commence in 1547, 1 Edw. VI.; and, with the exception of a short period during the reign of Elizabeth, are complete to the present time.

[4] Jones *v.* Randall, 1 Cowp. 17. Per Lord Mansfield: "Formerly a doubt was entertained whether the minutes of the House of Commons were admissible, because it is not a court of record: but the Journals of the House of Lords have always been admitted, even in criminal cases." 1 Starkie on Ev. 199. 2 Phil. & Amos, 591.

[5] 4th Inst. 23.

vote of the house, and necessarily formed part of its ordinary proceedings, which were entered at the same time, and by the same person, in the Clerk's Book; and the words of the statute raise no inference that the entry of a license was distinguishable, in law, from the other entries in the same book. This statute was urged by the Commons in 1606, at a conference with the Lords, as evidence in support of their claim to be a court of record, to which the Lords took no distinct objection, though they answered that "in all points they were not satisfied."[1]

Given in evidence.

The only point of importance in reference to the question, is that of the legal effect of the Journals as evidence in a court of law; and no difference is then perceptible in respect to the Journals of either house. An unstamped copy of the minutes of the reversal of a judgment in the House of Lords, as entered in the Journals, is evidence of the reversal, like the record of a judgment in another court.[2] And an entry in the Lords' Journals has been admitted by the Committee of Privileges, as evidence of limitations in a patent of peerage, without requiring the production of the patent.[3] The Journals of that house would also be evidence of a proceeding in Parliament having taken place, as that an address had been presented to the king, and his answer;[4] and in certain cases they might be admitted as evidence of other facts, as in the cause just cited, that there had been differences between the king of England and the king of Spain; but, undoubtedly, a resolution of the House of Lords, affirming a particular fact, would not be admitted as evidence of the fact itself, although the Journals would be evidence of such a resolution having been agreed to.

In the same manner, a copy of the Journals of the House of Commons has constantly been admitted as evidence of a

[1] 1 Com. J. 168. 349.
[2] Jones *v.* Randall, 1 Cowp. 17.
[3] Case of Lord Dufferin, 4 Clark & Finnelly, 568.
[4] Francklin's case, 17 Howell, St. Tr. 635, 636.

proceeding in that house:[1] but a resolution would not be evidence of a fact. Thus, upon the indictment of Titus Oates for perjury, a resolution of the House of Commons, alleging the existence of a popish plot, was rejected as evidence of that fact;[2] and although that trial must be held of doubtful authority, and the reasons assigned for the rejection of the evidence were not sound, yet upon general principles the determination of this matter was right. As evidence, therefore, the Journals of the two houses stand upon the same grounds; they are good evidence of proceedings in Parliament: but are not conclusive of facts alleged by either house, unless they be within their immediate jurisdiction. Thus a resolution might be agreed to by either house, that certain parties had been guilty of bribery: but in a prosecution for that offence, such a resolution would not be admitted as evidence of the fact, although in both cases it may have been founded upon evidence taken upon oath. But the reversal of a judgment by the Lords, and the proceedings of the Commons upon an election or return, would be equally proved by their respective Journals. In the same manner, a resolution of either house as entered in the Journals, that a party had been guilty of a breach of privilege, would be conclusive evidence of the fact that the party had been adjudged by the house to be guilty of such offence. And indeed, upon all other points, except, perhaps, when the House of Lords is sitting in its judicial capacity, the Journals of the two houses cannot be viewed as differing in character. Every vote of either house upon a bill is of equal force; in legislation their jurisdiction is identically the same: they are equally constituent parts of the High Court of Parliament; and whatever is done in either house, is, in law, a proceeding in Parliament, and an act of that high court at large. There are bills also of a strictly judicial character,

[1] Doug. 593. 1 Cowp. 17. Str. 126. See also R. *v.* Knollys, 1 Lord Raym. 10. 15. Bruyeres *v.* Halcomb, 5 Nev. & M. (K.B.) 149. 3 Adol. & Ell. 381.

[2] R. *v.* Oates, 10 Howell, St. Tr. 1165–1167.

in which the Commons have equal voice with the Lords. Acts of attainder, of pains and penalties, of grace or pardon, and of divorce, require the sanction of the Commons to become law. The endorsement of these bills by the clerk of the house is evidence of their agreement, by whom an entry is made at the same time in the Journal Book, to record the same proceeding. To use the words of Sir Edward Coke, "The Lords in their house have power of judicature, and the Commons in their house have power of judicature, and both houses together have power of judicature."[1] Their legislative and judicial functions are sometimes merged; at one sitting, they constantly exercise both functions separately, and their proceedings upon both are entered by their sworn officers, in the same form and in the same page of one book. If the judicature of the Lords be held to constitute them a court of record, and their Journals a public record, the judicature of the Commons in Parliament, it may be argued, would constitute them equally a court of record, and would also give to their Journals the same character as a public record. When the Commons desire information concerning any proceeding in the House of Lords, they appoint a committee to search the Lords' Journal. The Lords, on their side, have appointed committees to search the Commons' votes:[2] but their Lordships have also accepted the votes on the table of the house as sufficient evidence of proceedings of the Commons, without further search, or authentication.[3]

How authenticated.

When the Journals of the House of Lords are required

[1] 4th Inst. 23.

[2] 75 Lords' J. 590; 77 Ib. 505.

[3] On the 31st Dec. 1691, they resolved, "That the printed vote of the House of Commons is sufficient ground for the Lords to take notice of that vote, to the House of Commons." And again, on the 2nd Jan. following, they considered a resolution of the Commons, as it appeared in their printed votes; 3 Hatsell, 33. 59. In 1704, the Lords took notice of the votes of the Commons, as evidence of the proceedings of that house in the conferences relative to the case of Ashby and White, Ib. 304. On the 24th Feb. 1820, they resolved, "That it appears from the votes of the House of Commons, now on the table of the house, that the Commons have voted the following resolutions," which are entered at length in the Lords' Journal; 53 Lords' J. 17; 41 Hans. Deb. 1632.

as evidence, a party may have a copy or extract, authenticated by the signature of the clerk of the Parliaments, which it may be as well that he should be able to prove on oath, by having been personally present when the copy was signed by that officer; and in some cases the Lords have allowed an officer of their house to attend a trial with the original Journal.[1] In the Commons it is usual for an officer of the house to attend with the printed Journal, when a cause is tried in London: but when it is tried at the assizes, or at a distance, a party may either obtain from the Journal Office a copy of the entries required, without the signature of any officer, and swear himself that it is a true copy; or, with the permission of the house, or, during the recess, of the Speaker, he may secure the attendance of an officer to produce the printed Journal, or extracts which he certifies to be true copies; or, if necessary, the original manuscript Journal book.[2] In some cases the printed Journals have not been admitted by the courts as evidence, unless examined with the original Journal.[3] On the trial of Lord Melville, a printed copy of the Journal of the House of Commons was tendered in evidence: but Lord Erskine, C., ruled that "the printed Journal, if the party producing it had examined it with the original, would be as good evidence as the original Journal itself; but unless your copy be so examined, you must produce the original Journal."[4] By Act 8 & 9 Vict. c. 113, s. 3 (which does not extend to Scotland), it is enacted that all copies of the Journals of either House of Parliament purporting to be printed by the printers to either House of Parliament, or by any or either of them, shall be admitted as evidence thereof by all courts, judges, justices, and others, without any proof being given that

[1] Lords' J., 13th and 15th February 1844.

[2] 99 Com. J. 128; 100 Ib. 114.

[3] See Lord Melville's case, 29 Howell, St. Tr. 683. R. *v.* Lord G. Gordon, 2 Doug. 593.

[4] 29 Howell, St. Tr. 685.

such copies were so printed. But in *Chubb* v. *Salomons*,[1] a printed copy of the Journal of the House of Commons was produced, and a witness proved that he had "examined the printed book with the manuscript from which it was printed," or rather "the proof-sheets with the manuscript and not the last printed copy;" and the court rejected the printed Journal as evidence. An examined extract of the minute book, kept by the clerk at the table, was afterwards given in evidence.

Entries in the Journal expunged.

Entries in the Journal have occasionally been ordered to be expunged.[2] When the resolution of the 17th February 1769, affirming the incapacity of Wilkes, was ordered to be expunged, on the 3rd May 1782, "the same was expunged by the clerk at the table accordingly;"[3] and the entry is found to be erased in the manuscript Journal of that day: but the printed Journal, though reprinted since that time, still contains the obnoxious resolution.

Expunging motions from the clerk's minute book.

On the 16th May 1833, a motion was made by Mr. Cobbett, impugning the conduct of Sir Robert Peel. Lord Althorp moved, "That the resolution which has been moved be not entered in the minutes:" but the Speaker put the question thus, "That the proceedings be expunged," on the ground that the minutes had already been entered in the clerk's book. The question thus put was carried by 295 to 4, and no entry of the motion or other proceedings was made in the Votes.[4]

On the 6th March 1855, a motion was made relative to the appointment of a recorder for Brighton; and on proceeding to a division the mover was left alone, his seconder, *pro formâ*, declining to vote with him. A member immediately rose and moved that the motion should not be entered in the Votes, which was agreed to by all the members except

[1] 3 Carrington & Kirwan, 75.

[2] 4 Com. J. 397, &c.; 5 Ib. 197; 7 Ib. 317, &c.; 9 Ib. 126; 11 Ib. 210; 33 Ib. 509.

[3] 38 Ib. 977.

[4] 2 Peel's Speeches, 704; 17 Hans. Deb. 3rd Ser. 1324.

the mover of the original motion. Accordingly, there is no entry of either motion in the Votes.[1]

In extreme cases the house, in this manner, marks its indignant reprobation of an unseemly motion: but the practice is resorted to with caution, as it infringes upon the rights of individual members, and, unless exercised with forbearance, would be liable to dangerous abuse. The expunging of a motion from the minutes is also deprived of much of its significance, by the publication of all parliamentary debates and proceedings in every public journal.

This notice with regard to the Journals has necessarily interrupted the account of the chief officers of the House of Commons, to which it is now time to return.

Serjeant-at-arms.

The serjeant-at-arms is the last officer, immediately connected with the proceedings of the house, to whom reference need be made. He is appointed by the Queen,[2] under a warrant from the lord chamberlain, and by patent under the great seal, "to attend upon her Majesty's person when there is no Parliament; and, at the time of every Parliament, to attend upon the Speaker of the House of Commons:"[3] but after his appointment he is the servant of the house, and may be removed for misconduct. On the 2nd June 1675, the house committed Sir James Norfolke to the Tower, for "betraying his trust," and addressed the Crown to appoint another serjeant-at-arms "in his stead."[4] His duties are, to attend the Speaker with the mace on

[1] 137 Hans. Deb. 3rd Ser. 202.

[2] Lord Charles Russell having sent in his resignation of the office of serjeant-at-arms to the Lord Chamberlain, in February 1875, Mr. Disraeli stated on the 1st March, in answer to a question, that the appointment of serjeant-at-arms is in the gift, and entirely in the gift, of her Majesty the Queen: "There is no person, whatever his position, in the house, who has any influence in that appointment; but I have been commanded by the Queen to state that being aware of the strong, not to say unanimous, feeling of the house on the subject, her Majesty, as a gracious favour to her faithful Commons, has been pleased to appoint to the office the gentleman who is at present deputy serjeant-at-arms."—222 Hans. Deb. 3rd Ser. 998.

[3] Officers and Usages of the House. MS. 1805.

[4] 9 Com. J. 351.

entering and leaving the house, or going to the House of Lords, or attending her Majesty with addresses: to keep clear the gangway at the bar, and below it; to take strangers into custody who are irregularly admitted into the house, or who misconduct themselves there; to cause the removal of strangers whenever they are directed to withdraw; to give orders, to the doorkeepers and other officers under him, for the locking of all doors upon a division; to introduce, with the mace, peers or judges attending within the bar, and messengers from the Lords; to attend the sheriffs of London at the bar, on presenting petitions; to bring to the bar prisoners to be reprimanded by the Speaker, or persons in custody to be examined as witnesses. For the better execution of these duties he has a chair close to the bar of the house, and is assisted by a deputy serjeant. Out of the house, he is intrusted with the execution of all warrants for the commitment of persons ordered into custody by the house, and for removing them to the Tower or Newgate, or retaining them in his own custody. He serves, by his messengers, all orders of the house, upon those whom they concern. He also maintains order in the lobby and passages of the house. On the 5th March 1807, complaints having been made by members of the crowds of strangers which had collected in the lobby, to their obstruction, the Speaker "declared it to be the duty of the serjeant, when he found that the accesses to the house were crowded with strangers, to provide proper persons to clear them and to maintain order."[1]

It is another of his duties to give notice to all committees, when the house is going to prayers. He has the appointment and supervision of the several officers in his department; and, as housekeeper of the house, has charge of all its committee-rooms and other buildings, during the sitting of Parliament.

By the ancient custom of Parliament,[2] and by orders of Admission of strangers.

[1] 9 Hans. Deb. 1. [2] 1 Com. J. 105. 118. 417. 484; 2 Ib. 74. 433, &c.

both houses, strangers are supposed not to be admitted while the houses are sitting.

Lords. It is ordered by the Lords,

"That for the future no person shall be in any part of the house during the sitting of the house, except lords of Parliament and peers of the United Kingdom not being members of the House of Commons, and heirs apparent of such peers or of peeresses of the United Kingdom in their own right, and such other persons as attend this house as assistants."[1]

Strangers, however, are regularly admitted below the bar, and in the galleries: but the Standing Order may at any time be enforced.

Until 1845, the sessional orders of the Commons had also contemplated the entire exclusion of strangers from every part of the house: but since that time the presence of strangers has been recognised in those parts of the house not appropriated to the use of members. On the 3rd May 1836, the house, in pursuance of the report of a select committee, ordered that arrangements should be made for the accommodation of ladies, during the debates.[2]

Ladies' gallery.

Commons. By the Standing Orders of the Commons, the serjeant-at-arms is directed,

"From time to time to take into his custody any stranger or strangers that he shall see, or who may be reported to him to be, in any part of the house or gallery appropriated to the members of this house,[3] and also any stranger who, having been admitted into any other part of the house or gallery, shall misconduct himself, or shall not withdraw when strangers are directed to withdraw, while the house, or any committee of the whole house, is sitting; and that no person, so taken into custody, be discharged out of custody without the special order of the house." And it is also ordered, "That no member of this house do presume to bring any stranger into any part of the house or gallery appropriated to the members of this house, while the house, or a committee of the whole house, is sitting."[4]

[1] Lords' S. O. No. 8.

[2] 91 Com. J. 319.

[3] An exception to this rule has always been made in favour of clerks and officers of the house.

[4] Orders 5th Feb. 1845, made Standing Orders. Stow says, "In the year 1584, a new Parliament sat in November, when one Robinson, a lewd fellow, and a skinner, had the confidence to sit in the house all the day, though no member, and heard

And in compliance with the general orders of the house, the serjeant has accordingly taken strangers into custody who have come irregularly into the house, or have misconducted themselves there.[1] According to ancient usage, the exclusion of strangers could, at any time, be enforced without an order of the house; for, on a member taking notice of their presence, the Speaker was obliged to order them to withdraw, without putting a question.[2] Nor did the recognition of their presence, by the Standing Orders of 1845, supersede the ancient usage, which was founded upon the principle of their entire exclusion. On the 18th May 1849, a member took notice that strangers were present, who were ordered to withdraw.[3] The doors were accordingly closed for upwards of two hours, and no report of the debates, during that time, appeared in the newspapers. Strangers were re-admitted without any order of the Speaker. And again, on the 8th June, in the same year, strangers were ordered to withdraw.[4] The revival of this exceptional practice led to the appointment of a committee, which unanimously declared against any alteration of the rules of the house.[5] It was not until the 23rd May 1870, that strangers were again

all the speeches, wherein many weighty matters were uttered relating to the concernments of the Queen and the kingdom. . . . . When this fellow was discovered, he was searched and nothing found about him. Mr. Fleetwood, the Recorder, Mr. Beal, and other Parliament men and Papist-finders, were sent to search his lodgings, but found nothing. He remained for some time in the serjeant's custody, and so, it seems, was dismist."—Survey of the Cities of London and Westminster (Skinners' Company). See also 15 Com. J. 527, from which it appears that members had been prevented from sitting by the pressure of strangers. See also Hans. Deb. 12th Feb. 1844 (Mr. Christie's motion). On the 9th March 1875, two strangers having inadvertently found their way into the body of the house, with a number of members pressing in to a division, and being discovered after the doors were locked and the division was proceeding, the serjeant removed them, and reported their intrusion to the Speaker. After the division they were let out, without any report to the house.

[1] 29 Com. J. 23; 74 Ib. 537; 86 Ib. 323; 88 Ib. 246.

[2] 15 Hans. Deb. 310 (Walcheren Expedition, 1810); 77 Hans. Deb. 3rd Ser. 138 (see Mr. Speaker's explanation of the rule).

[3] 105 Hans. Deb. 3rd Ser. 662.

[4] Ib. 1320.

[5] Rep. 1849 (498).

ordered to withdraw, in order to avoid publicity being given to a debate upon the Contagious Diseases Acts.[1] This led to further discussion:[2] but the house still adhered to the old rule of exclusion, which was again enforced on the 19th March 1872.[3]

At length, however, the extreme inconvenience of such a rule forced itself upon the serious attention of the house, and on the 31st May 1875, it was resolved:

"That if at any sitting of the house, or in committee, any member shall take notice that strangers are present, Mr. Speaker, or the chairman (as the case may be), shall forthwith put the question that strangers be ordered to withdraw, without permitting any debate or amendment: Provided that Mr. Speaker, or the chairman, may, whenever he thinks fit, order the withdrawal of strangers from any part of the house."

This resolution was not made a Standing Order; but on the 3rd March 1876, when notice was taken of the presence of strangers, Mr. Speaker, instead of directing them to withdraw, put the question in pursuance of the resolution. On Monday the 6th, he called the attention of the house to this proceeding, and explained that he had considered himself bound to follow the practice prescribed by that resolution, until otherwise instructed by the house; but he thought it proper to give the house an opportunity of further declaring its purpose, and determining whether that resolution should be permanent.[4] Again, on the 19th July in the same year, notice being taken that strangers were present, Mr. Speaker reminded the House of the resolution of the 31st May 1875, and stated that he had, on a previous occasion, during the present session, explained that he considered himself bound to follow the practice prescribed by that resolution, until otherwise instructed by the house; and that as no such instruction had since been given, he should proceed to put

[1] 201 Hans. Deb. 3rd Ser. 1307.
[2] 30th May 1870; Ib. 1640.
[3] 203 Hans. Deb. 3rd Ser. 651.
[4] 131 Com. J. 77. 79; 227 Hans. Deb. 3rd Ser. 1420.

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the question, in pursuance of that resolution.[1] And on the 12th of April 1878, during a debate upon the murder of the Earl of Leitrim, notice being taken that strangers were present, Mr. Speaker put the question for their withdrawal, which was affirmed by a large majority.[2] The same course was pursued on the 22nd May, in the same year; but, as no second teller could be found for the motion, the Speaker declared that the Noes had it.[3] This rule may, therefore, be taken as established. It must be observed, however, that an order for the withdrawal of strangers does not extend to the ladies' gallery, which is not supposed to be within the house. Ladies can therefore only be informed of the subject of debate, and left to withdraw or not, at their own discretion.[4] Upon divisions of the house, strangers were entirely excluded until 1853, but are now merely desired to withdraw from below the bar.[5]

Strangers during a division.

On the 3rd August 1855, notice was taken that two soldiers in uniform, lately returned from the Crimea, had been refused admission to the Strangers' gallery. The Speaker stated that there was no rule for their exclusion: but since a complaint had been made of their admission (it was afterwards said by Sir F. Burdett), they had not been admitted except in plain clothes.[6] Soldiers in uniform, but unarmed, have since been freely admitted.

Soldiers in uniform.

The only other matters connected with the meeting and sitting of the two houses which will not be more particularly described elsewhere, are the forms observed on the prorogation of Parliament. Some of these, also, will be adverted to again: but a general description of the ceremony of prorogation will bring this chapter to a close.

According to former usage, when a new Parliament was prorogued to any further day than that appointed for its

Parliament prorogued before its first meeting.

[1] 131 Com. J. 348; 230 Hans. Deb. 3rd Ser. 1555.

[2] 123 Com. J. 186; 239 Hans. Deb. 3rd Ser. 1262.

[3] 240 Hans. Deb. 3rd Ser. 478.

[4] 230 Ib. 1553–1555.

[5] See *infra*, Chapter XII.—Divisions.

[6] 139 Hans. Deb. 3rd Ser. 1748.

meeting by the writ of summons, it was prorogued by writ directed to both houses. On the day first appointed for the meeting of Parliament, the Commons proceeded directly to the door of the House of Lords, without going into their own house, or expecting any message from the Lords. They were admitted by the usher of the black rod to the bar, and the writ being read, the Parliament stood prorogued by virtue of the writ, without further formality.[1] But, in 1867, this ceremony was superseded by the simpler form of a royal proclamation.[2]

After its first meeting.

If her Majesty attend in person to prorogue Parliament at the end of the session, the same ceremonies are observed as at the opening of Parliament: the attendance of the Commons in the House of Peers is commanded; and, on their arrival at the bar, the Speaker addresses her Majesty, on presenting the supply bills, and adverts to the most important measures that have received the sanction of Parliament during the session.[3] The royal assent is then given to the bills which are awaiting that sanction,[4] and her Majesty reads her speech to both Houses of Parliament herself, or by her chancellor;[5] after which the lord chancellor, having received directions from her Majesty for that purpose, addresses both houses in this manner,—"My lords and gentlemen, it is her Majesty's royal will and pleasure that this Parliament be prorogued to" a certain day, "to be then here holden; and this Parliament is accordingly prorogued," &c. When her Majesty is not present at the end of the session, Parliament is prorogued by a commission under the great seal, directed to certain peers, who, by virtue of their commission,

[1] 59 Lords' J. 3. 82 Com. J. 4. 2 Hatsell, 328.

[2] 30 & 31 Vict. c. 81. By this Act a proclamation may be issued "to prorogue Parliament from the day to which it shall then stand summoned or prorogued, to any further day, being not less than fourteen days from the date thereof."

[3] See debate in 1814, on Mr. Speaker Abbot's speech, referring to a bill which had not received the assent of the house. 27 Hans. Deb. 466. See also Chapter XXI.—Supply. Lord Colchester's Diary, ii. 453-459. 483-496.

[4] See Chapter XVIII.—Bills.

[5] See *supra*, p. 220.

prorogue the Parliament. The attendance of the Commons is desired in the House of Peers; and, on their coming, with their Speaker, the lord chancellor states to both houses, that her Majesty, not thinking fit to be personally present, has caused a commission to be issued under the great seal, for giving the royal assent to bills. The commission is then read, and the Speaker, *without any speech*, delivers the money bills to the clerk of the Parliaments, who comes to the bar to receive them. The royal assent is signified to the bills in the usual manner; after which the lord chancellor, in pursuance of her Majesty's commands, reads the royal speech to both houses. The commission for proroguing the Parliament is next read by the clerk, and the lord chancellor, by virtue of that commission, prorogues the Parliament accordingly. On further prorogations, prior to 1867, the Commons were represented at the bar of the House of Lords by their clerk, clerk assistant, or second clerk assistant;[1] the commission was read, and the lord chancellor prorogued the Parliament in the usual manner: but by the 30 & 31 Vict. c. 81, this obsolete and unimpressive ceremony was discontinued, and Parliament has since been prorogued by royal proclamation only.

[1] The Speaker formerly attended; the earliest instance of the clerk attending being in 1672 (9 Com. J. 244); and of the clerk assistant in 1706 (15 Ib. 199). George III. assigned a later date to this practice, saying, "Oh, I'll tell you how all that came about. Sir John Cust wanted to go to Spa, and desired I would excuse his attendance upon the prorogation during the recess. Then came Sir Fletcher Norton, and he took advantage of the last precedent; Mr. Cornwall followed the same; and so the Speakers have all considered themselves as going to Spa ever since." Lord Colchester's Diary, Nov. 1st, 1809, ii. 213.

CHAPTER VIII.

MOTIONS AND QUESTIONS. NOTICES OF MOTIONS, AND ORDERS OF THE DAY. QUESTIONS MOVED AND SECONDED. MOTIONS WITHDRAWN. QUESTIONS SUPERSEDED BY ADJOURNMENT; OR BY READING THE ORDERS OF THE DAY. PREVIOUS QUESTIONS. NEW QUESTIONS SUBSTITUTED BY AMENDMENT. COMPLICATED QUESTIONS. QUESTIONS PUT.

Questions a part of every proceeding.

EVERY matter is determined, in both houses, upon questions put by the Speaker, and resolved in the affirmative or negative, as the case may be. As a question must thus form part of every proceeding, it is of the first importance that good rules should prevail for stating the question clearly, and for enabling the house to decide upon it. However simple such rules may be, the complexity of many questions, and the variety of opinions entertained by members, must often make it difficult to apply them. Very few general rules have been entered in the Journals of either house; but the practice of Parliament has established certain forms of procedure, which numerous precedents rarely fail to make intelligible.

Notices of motions.

Every member is entitled to propose a question, which is called "moving the house," or, more commonly, "making a motion:" but in order to give the house due notice of his intention, and to secure an opportunity of being heard, it has long been customary to state the form of the motion on a previous day, and to have it entered in the Order Book or Notice Paper.[1]

[1] 3rd Feb. 1806. Before the rising of the house, Mr. Fox moved for leave to bring in a bill to enable Lord Grenville to hold the two offices of auditor of the Exchequer and first Lord of the Treasury. "I objected to such a motion without notice. Mr. Fox inclined to persist; but the house was of my opinion for adhering to the present practice of giving notice of new matters. And he gave a notice accordingly." Lord Col-

Formerly, the pressure of business in the House of Lords had not been so great as to require any strict rules in regard to notices: but on the 26th March 1852, the following resolutions were agreed to:[1] House of Lords.

"That all notices of proceedings on public bills, and of other matters, be inserted in the minutes of each day, according to the priority of every such notice, or as the lords giving the same may have agreed, and that the house do always proceed with the same in the order in which they shall so stand, unless the lord who shall have given any such notice shall withdraw the same, or shall, with the leave of the house, consent to its postponement, or shall be absent at the appointed time after the house shall have entered upon the consideration of the said notices, in which latter case it shall be held to be a lapsed order, and not be proceeded with, until after the notice shall have been renewed.

"That on all occasions notices to suspend any of the Standing Orders of the house, and notices relating to private bills, shall be disposed of before the house proceeds to the other notices.

"That on Tuesdays and Thursdays the bills which are entered for consideration on the minutes of the day, shall, with the before-mentioned exception, have precedence of all other notices: but petitions relating to any such bill may be presented immediately before the motion is made to proceed with the bill.

"That any business for which notice is not required, and all proceedings relating to private bills, may, in accordance with present usage, be entered upon before the notices of the day are called for: but the house will proceed with the notices in preference to other matters at any time after a quarter past five o'clock, at the request of any lord who may have a notice on the minutes."

In the Lords, the usual order of business is occasionally changed, by special order. For example, on the 9th July 1868, it was ordered that third readings, on the orders of the day, for this day, be taken after the City of London Gas Bill, and before the other orders of the day.[2] And on the 10th July, it was ordered that the Representation of the People (Scotland) Bill, and the bills appointed for third

chester's Diary, ii. 35. On the 27th of the same month, Mr. Speaker Abbot stated it to be then a settled practice, that previous notice was required to be given of motions of a public nature. 6 Hans. Deb. 1st Ser. 229. Lord Colchester's Diary, ii. 41. See also 12th March 1836; 31 Hans. Deb. 3rd Ser. 1154.

[1] 84 Lords' J. 74.

[2] 100 Ib. 393.

reading, be taken before the notices and the other orders of the day.[1]

On the 20th July 1868, it was ordered "that for the remainder of the session, the bill or bills which are entered for consideration on the minutes of the day, shall have the same precedence which bills have on Tuesdays and Thursdays."[2] A similar order was made on the 14th August 1871,[3] and has become usual at the close of a session. The public business appointed for the day commences at half-past four o'clock.

House of Commons.

In order to apportion the public business according to the convenience of the house, it is usual for the House of Commons to set apart certain days for considering the "orders of the day" (or matters which the house have already agreed to consider on a particular day), and to reserve other days for original motions.

Restriction in giving notices.

Subject to this regulation, it was formerly the practice to allow members to give notices for any day, however distant; but by a Standing Order, it is now provided,

> "That no notice shall be given beyond the period which shall include the four days next following on which notices are entitled to precedence; due allowance being made for any intervening adjournment of the house, and the period being in that case so far extended as to include four notice days falling during the sitting of the house."

The Order Book cannot, therefore, be occupied in advance, with notices, for a longer period than a month, when the house is sitting without interruption. No allowance is made for an intended adjournment, until the house has actually agreed to it. Thus, for example, if it be intended to move the Easter adjournment on a Thursday until the Monday week following, a member cannot, on the Tuesday preceding such adjournment, give notice for a later day than that day month: but immediately the house has agreed, at its rising, to adjourn for the holidays, notices may be given for the four next notice nights during the sitting of the house after the

[1] 100 Lords' J. 401. [2] Ib. 442. [3] 103 Ib. 656.

adjournment. Notices may be given for days on which orders of the day are allowed precedence, as well as for notice days: but as the orders usually occupy the greater part of the night, notices of importance are rarely given for such days, unless it has been agreed that the orders shall be postponed. The priority of members desiring to give notices on the same day is determined by ballot; and on being called by Mr. Speaker, they rise and give their notices, without debate or comment.

By the latest Standing Orders of the House, it is directed,

Orders of the day.

"That unless the house shall otherwise direct, all orders of the day set down in the Order Book for Mondays, Wednesdays, Thursdays, and Fridays, shall be disposed of before the house will proceed upon any motions of which notices shall have been given; the right being reserved to her Majesty's ministers of placing government orders at the head of the list on every order day, except Wednesday."[1]

Orders of the day read.

"That at the time fixed for the commencement of public business, on days on which orders have precedence of notices of motions, and after the notices of motions have been disposed of on all other days, Mr. Speaker do direct the clerk at the table to read the orders of the day, without any question being put."

Precedence of orders of the day.

"That the orders of the day be disposed of in the order in which they stand upon the paper, the right being reserved to her Majesty's ministers of placing government orders at the head of the list, in the rotation in which they are to be taken, on the days on which government bills have precedence."[2]

Supply on Friday.

"That while the committees of supply and ways and means are open, the first order of the day on Friday shall be either supply or ways and means, and that on that order being read, the question shall be proposed 'that Mr. Speaker do now leave the chair.'"

Distribution of business.

Monday, Thursday, and Friday are accordingly set apart for the government orders, Wednesday for the orders of independent members, and Tuesday for notices of motions.

[1] The first resolution giving precedence to orders of the day was in 1811, and applied to Monday and Friday only; 66 Com. J. 148; 19 Hans. Deb. 106. 244. In 1835, it was extended to Wednesday.

[2] The origin of government nights may probably be traced to the following order, 15th November 1670: "That Mondays and Fridays be appointed for the only sitting of committees to whom public bills are committed; and that no private committee do sit on the said days." 9 Com. J. 164. See also 1 Ib. 523. 640 (Committee of Grievances, 1621).

But as the committee of supply or ways and means is the first order on Friday, it is practically a notice night, the government merely having the residue of the evening, after all the notices and debates on going into committee have been disposed of. At the close of the session, Tuesday has also usually been appropriated, when necessary, for orders of the day, government orders having priority.[1] Occasionally, also, the orders of the day have been directed to take precedence of notices, on a particular day.[2]

Government orders.

Wednesday having been recognised as the day set apart for the bills promoted by members unconnected with the government, there is a tacit understanding that, at the commencement of the session, no government orders shall be set down so as to compete, for precedence, with other orders of the day. Towards the end of the session, however, when the pressure of public business becomes excessive, and the greater part of the bills of private members have been disposed of, or are without hope of further progress, government orders are continually appointed for Wednesday, and are taken in their turn with the other orders.[3] But the interposition of government orders, though exercised with much forbearance, is liable to objections on the part of independent members in charge of other bills. On Wednesday, 5th August 1857, the committee of supply stood the fourth order, and notice had been given of moving estimates in committee. On the order of the day being read, and motion made for the Speaker leaving the chair, an amendment was moved to postpone that and the seven succeeding (government) orders, till after the Election Petitions Bill, which was the first order of the day of a

[1] 15th June, 1868; 123 Com. J. 243. 25th July 1870; 125 Ib. 358. 31st July 1871; 126 Ib. 382. 19th July 1872; 127 Ib. 365. 23rd July 1877; 132 Ib. 367. 15th July 1878; 133 Ib. 354. 14th July 1879; 134 Ib. 340, &c.

[2] 17th Aug. 1860; 115 Com. J. 477. 15th July 1878; 133 Ib. 354.

[3] The committee of supply has frequently sat on Wednesday; 109 Com. J. 465; 112 Ib. 377; 113 Ib. 311; 122 Ib. 417.

private member. This amendment was withdrawn on the government consenting to postpone the committee of supply till after the other orders, but taking all the other government orders as they stood in the Order Book.[1] On several occasions an order has been made that government orders have precedence on Wednesdays.[2] Generally, towards the close of the session, it has been ordered that during the remainder of the session, government orders should have precedence upon Wednesdays.[3] And of late years it has been customary to include Tuesday and Wednesday in the same resolution, giving precedence to government orders on those days.[4] When such an order has been made, it has been ruled that the government can give priority to the bill of one private member over that of another.[5] Occasionally the Standing Orders relating to Wednesday sittings have been suspended.[6] On Wednesday, 7th August 1872, these orders were suspended until the proceedings upon the Licensing Bill had been concluded;[7] and again, on Wednesday, 15th July 1874, until the adjourned debate on the Public Worship Regulation Bill had been disposed of.[8]

Orders of the day postponed till after certain notices.

When it becomes necessary to disturb the appointed order of business, and to give precedence to some important subject of debate, a special order is made for that purpose. If it be desired to give priority to a notice of motion on any day on which orders of the day are entitled to precedence, notice having previously been given, a motion is made that

[1] 112 Com. J. 377; 147 Hans. Deb. 3rd Ser. 1083.

[2] 8th Aug. 1853; 2nd Aug. 1869; 6th Aug. 1872. See Debate, 129 Hans. Deb. 3rd Ser. 1463. 124 Com. J. 387. 127 Ib. 421.

[3] 4th Aug. 1871; 126 Com. J. 397. 23rd July 1877; 132 Com. J. 367, &c.

[4] 14th July 1879; 134 Com. J. 340. 12th July 1880; 135 Com. J. 294. 1st Aug. 1881; 136 Com. J. 419. 24th July 1882; 137 Com. J. 395. On this latter occasion the period fixed was the end of August, as an autumn session was contemplated.

[5] 30th July, 1873; 217 Hans. Deb. 1256.

[6] 4th July 1865; the house then sat on the 5th, at a quarter before four, instead of 12; 120 Com. J. 449.

[7] 127 Ib. 426.

[8] 129 Ib. 303.

the orders of the day be postponed until after such notice of motion. On the 11th March 1873, in order to give precedence to the adjourned debate on the University Education (Ireland) Bill, it was ordered that the notices of motions, and the first six orders of the day appointed for this day, be deferred till Thursday next, when they shall be taken into consideration before the orders of the day now standing in the Order Book for Thursday. On the 12th May 1873, it was ordered that the orders of the day subsequent to the order for the committee of supply be postponed till after the notice of motion for the appointment of a select committee on the boundaries of parishes, unions, and counties. Similar orders were made on the 9th and 12th June 1873, on the 27th June 1877, and on other occasions.

The orders being thus postponed by order of the house, the particular notice of motion is accordingly called by the Speaker, and proceeded with. When it has been disposed of, the house reverts to the orders of the day. Sometimes the orders of the day have been postponed, generally until after the notices of motions.[1] Occasionally, also, some of the orders of the day have been disposed of, and others postponed until after a particular notice of motion.[2] And, again, some orders of the day are postponed until after the other orders, or until after particular orders of the day.[3] On Friday, the 11th May 1877, the order of the day for the Committee of Supply (which stood first, pursuant to the Standing Order,) was postponed until after the order of the day for resuming the adjourned debate upon the Eastern Question. On Tuesday, the 21st February 1860, the house adopted an unprecedented course. Mr. Ducane having given notice of a resolution in committee on the Customs Acts, which could not regularly be proposed in that committee, Sir J. Graham

[1] 3rd and 5th June 1852; 107 Com. J. 186. 320.

[2] 25th July 1856 (Motion for return of Public Bills); 111 Com. J. 386.

[3] 115 Com. J. 97. 158; 117 Ib. 81; 119 Ib. 93; 176 Hans. Deb. 3rd Ser. 826; 6th July 1868; 123 Com. J. 298; 17th June 1869; 124 Com. J. 256; 125 Ib. 106; 132 Ib. 302.

suggested that it might be moved as a substantive motion after the other notices. Though this course was at variance with the Standing Orders, which require the orders of the day to be proceeded with after the notices, and the Speaker pointed out its irregularity, the house agreed to it by acclamation.[1] On Monday, the 22nd June 1863, Lord Palmerston having agreed to give up that evening to Mr. Hennessy's motion relative to Poland, moved the postponement of the orders of the day for that purpose: but the house did not concur in this arrangement, and upon a division refused, by a large majority, to postpone the orders of the day.[2]

Facilities of this kind are conceded by Government according to the importance and urgency of the motions to be discussed, and the state of public business.[3] They have generally been given to motions amounting to a distinct vote of want of confidence in ministers, proposed by leaders of the opposition; but not to motions or bills of other members, which, if carried in opposition to ministers, would probably cause their resignation; for if such a principle were admitted, the arrangement of public business entrusted to them, would be taken out of their hands.[4]

Notices postponed until after an order of the day.

When it is desired to resume an adjourned debate, or to give precedence to any other order of the day, on a notice day, it is usual to induce members, who have notices on the paper, voluntarily to postpone them: but when they decline to forego their privilege, or it is deemed right to interpose the authority of the house, notice having previously been given,[5]

[1] 156 Hans. Deb. 3rd Ser. 1473.

[2] 118 Com. J. 303; 171 Hans. Deb. 3rd Ser. 119. Mr. Speaker's Note-Book.

[3] Special facilities were afforded in 1868, to the discussion of Mr. Gladstone's Resolutions upon the Irish Church; 191 Hans. Deb. 3rd Ser. 31–35. 826. 1679. 1707. 1745.

[4] See Debates, April 1872, in relation to Mr. Fawcett's University of Dublin Bill. In 1873, facilities were given to this bill in a modified form. See, also, questions and debates, in March and April 1883, concerning facilities for a debate on the Transvaal, the release of prisoners from Kilmainham, and the Cuban refugees.

[5] On Tuesday, 10th February 1880, such a motion was made without notice, with the general assent of the house, the first notice on the paper having been postponed. See Speaker's ruling, Hans. Deb. 10th Feb. 1880.

an order is made that the notices of motions be postponed until after the particular order of the day, which it is desired to consider,[1] or that such order of the day have precedence of notices.[2] Special orders are occasionally made for the more convenient arrangement of business, as that an order of the day have precedence of motions on one day, and of orders of the day on another.[3] Such order of the day is then read and proceeded with, after which the notices of motions are called, and, lastly, the other orders of the day.

On Tuesday, 29th April 1856, the mover of the first notice having refused to postpone it, his motion, together with all the other notices, was disposed of by a motion that the house do now pass to the orders of the day, which being at once put and agreed to, the orders of the day were read and proceeded with.[4] On Thursday, 15th May 1873, the orders of the day having been postponed till after a notice of motion for a Select Committee to inquire into the case of the Callan Schools, an amendment was moved to that motion, to the effect that the house having already papers before it upon that subject, "do pass to the orders of the day." If this amendment had been carried, the house would have immediately reverted to the orders of the day, which had lately been postponed.

General precedence given to particular bills.

On special occasions of urgency, a general precedence has been given to particular bills over all other business. Thus, on the 25th January 1881, it was ordered that the introduction and the several stages of the Protection of Persons and Property (Ireland) Bill, and of the Peace Preservation (Ireland) Bill, have precedence of all orders of the day and notices of

[1] Tuesday, May 6th 1856, adjourned Debate on the Treaty of Peace; Tuesday, March 3rd 1857, adjourned debate on China; Tuesday, 8th May 1877, adjourned debate on the Eastern Question; Tuesday, 15th May 1877, Universities of Oxford and Cambridge Bill, 132 Com. J. 208. 226; 11th January 1881, 136 Com. J. 18, &c.

[2] April 23rd 1860, third reading of Church Rates Abolition Bill, 115 Com. J. 199.

[3] 136 Com. J. 24.

[4] Depopulation of rural districts in Ireland, 111 Com. J. 167.

motions, until the house shall otherwise order.[1] On the 23rd May 1882, it was resolved that the several stages of the Prevention of Crime (Ireland) Bill, and the adjourned debate on the second reading of the Arrears of Rent (Ireland) Bill, have precedence of all orders of the day and notices of motions, from day to day until the house shall otherwise order.[2] And again, on the 20th June 1882, it was ordered that the Arrears of Rent (Ireland) Bill have precedence, on every day for which it is set down, of all other orders of the day and notices of motions, except the Prevention of Crime (Ireland) Bill.[3] On the 24th October 1882, it was ordered that the consideration of the new rules of procedure have precedence of all orders of the day and notices of motions, on every day for which they may be set down.[4]

Orders appointed for half-past four.

Occasionally an order of the day is specially appointed for half-past four o'clock, and is considered at that hour, by itself, before the other business is proceeded with.[5] This course is generally adopted in regard to the third reading of financial or other bills, which it is important to have read a first time, in the Lords, on the same day. It has also been resorted to on Fridays, when, by the Standing Orders, supply stands as the first order;[6] and the regularity of the practice, in such cases, has been fully recognised.[7]

Orders cannot be changed to an earlier day.

When the house has appointed a day for the consideration of a bill or other matter, no earlier day can afterwards be substituted. This rule is necessary to avoid surprises, and so rigorously is it enforced, that even when it has been admitted

[1] 136 Com. J. 32. For a construction of this order, see 258 Hans. Deb. 3rd Ser. 1744.

[2] 137 Com. J. 224.

[3] Ib. 289.

[4] Ib. 491.

[5] Exchequer Bills Bill, and Ways and Means Report, Tuesday, 9th May 1854; 109 Com. J. 226. Annuities Bill, Tuesday, 27th May 1856; 111 Com. J. 220. Oaths Bill, adjourned debate, Tuesday, 11th May 1858; 113 Com. J. 167. Tobacco Duties Bill, third reading, 23rd March 1863; 118 Com. J. 130, &c.

[6] Consolidated Fund Bill, third reading, Friday, 28th March 1873; Friday, 27th March 1874; Friday, 24th March 1876; Friday, 24th March 1882, &c.

[7] Speaker's ruling, 31st March 1868; 191 Hans. Deb. 3rd Ser. 573; and see debate, Friday, 24th March 1876; 228 Hans. Deb. 3rd Ser. 564.

that a day had been named by mistake, and no one objected to the appointment of an earlier day, the change was not permitted.[1]

The business of the house on Wednesday is regulated by the following Standing Orders:—

Sittings on Wednesday.

"That the house do meet every Wednesday, at twelve o'clock at noon, for private business, petitions, orders of the day, and notices of motions, and do continue to sit until six o'clock, unless previously adjourned.

"That when such business has been disposed of, or at six o'clock precisely, notwithstanding there may be business under discussion, Mr. Speaker do adjourn the house, without putting any question.

"That the business under discussion, and any business not disposed of at the time of such adjournment, do stand as orders of the day, for the next day on which the house shall sit.

"That at a quarter before six o'clock on Wednesday, the debate on any business then under discussion shall stand adjourned until the next day on which the house shall sit; after which no opposed business shall be proceeded with.

"That whenever the house shall be in committee on Wednesday, at a quarter before six o'clock, the chairman do report progress, and Mr. Speaker do resume the chair." [2]

The forced adjournment of a debate, under these orders, at a quarter before six, frequently causes the anomaly of such an adjournment immediately following upon a determination of the house that the debate shall not be adjourned.[3]

Other morning sittings.

By other Standing Orders, of the 5th August 1853, and 19th July 1854, provision was made for morning sittings on other days from twelve till four: the sittings being resumed at six. Under these orders it was customary, during the later months of the session, to appoint morning sittings, from twelve till four, on Tuesdays and Fridays. In 1867, the

[1] London, Chatham and Dover Railway Bill, 6th July 1863. In this case the Standing Orders were suspended in order to accelerate the next stage of the bill; 118 Com. J. 237; 172 Hans. Deb. 3rd Ser. 246.

[2] On Wednesday, 28th Mar. 1860, it being a quarter before six, the chairman reported progress on the Income Tax Bill, when, as there was no opposition to it, the house again resolved itself into committee on the bill, and the committee proceeded through the bill, and reported it.

[3] 127 Com. J. 105. 187. 356; 132 Ib. 302.

progress of the Reform Bill was facilitated by a change in the hours of these morning sittings. The house met at two on Tuesdays and Fridays, instead of twelve; its sitting being suspended at seven, and resumed at nine. The only difficulty incident to this arrangement was that of securing the attendance of forty members at nine o'clock, which has frequently caused the loss of the evening sitting. Notwithstanding this difficulty, however, the new arrangement was found so convenient, that it has since virtually superseded the 12 o'clock sittings; but hitherto it has been founded upon resolutions of 30th April 1869, revived each session, and not by Standing Orders. These Resolutions are as follows:—

"That, unless the house shall otherwise order, whenever the house shall meet at two o'clock, the house will proceed with private business, petitions, motions for unopposed returns, and leave of absence to members, giving notices of motions, questions to ministers, and such orders of the day as shall have been appointed for the morning sitting.

"That on such days, if the business be not sooner disposed of, the house will suspend its sitting at seven o'clock; and at ten minutes before seven o'clock, unless the house shall otherwise order, Mr. Speaker shall adjourn the debate on any business then under discussion, or the chairman shall report progress, as the case may be, and no opposed business shall then be proceeded with.

"That when such business has not been disposed of at seven o'clock, unless the house shall otherwise order, Mr. Speaker (or the chairman, in case the house shall be in committee) do leave the chair, and the house will resume its sitting at nine o'clock, when the orders of the day not disposed of at the morning sitting, and any motion which was under discussion at ten minutes to seven o'clock, shall be set down in the order book after the other orders of the day.

"That whenever the house shall be in committee at seven o'clock, the chairman do report progress when the house resumes its sitting."

Government orders have precedence at these morning sittings. On the 26th June 1851, Mr. Speaker Shaw-Lefevre said, "that the practice of the house,—for no rule existed on the subject,—had always been, since he had had the honour of sitting in that chair, that at the morning sittings the government bills took precedence over other bills: but other members were not precluded from putting down

their own bills for the morning sittings; and if they were put down, they would come on, in the regular order, after the government bills, if there were any."[1] Again, on the 21st June 1872, Mr. Speaker Brand, being referred to upon the same subject, after citing the above ruling, added: "There has been no departure from that ruling, nor could any departure from such ruling be sanctioned without the express authority of the house itself."[2]

Sometimes a special order is made at the commencement of a morning sitting, that a Committee have leave to sit till seven, and report at nine; in which case the Speaker is not required to resume the chair during the morning sitting.[3]

Dropped orders.

It is ordered "that all dropped orders of the day be set down in the Order Book, after the orders of the day for the next day on which the house shall sit." But in construing this order it must be understood, that if an order of the day has been read and proceeded with, and the house is adjourned before it is disposed of, it is not treated as a *dropped order*, but, being superseded, must be revived before it takes its place again in the Order Book.[4]

Order of business on Saturdays.

Bills of private members have rarely been appointed for Saturday sittings, and government orders are entitled to precedence on that day.[5]

Orders of the day read.

When the clerk is proceeding to read the orders of the day, the course of business may not be interrupted by any other business or debate, or motion for adjournment, which members may endeavour to interpose.[6] So soon as an order of the day has been read, the business to which it relates is to be immediately proceeded with; and the Speaker, therefore,

[1] 117 Hans. Deb. 3rd Ser. 1254; see also Ib. 1150.

[2] 212 Ib. 22; see also Ib. 704–708.

[3] Irish Land Bill, 1870; 125 Com. J. 137. 314. 7th Aug. 1852; 213 Hans. Deb. 3rd Ser. 646.

[4] Reformatory Schools (Scotland) Bill, 8th May 1856; Joint Stock Companies Winding-up Acts Amendment Bill, 19th May 1856. See also 119 Com. J. 131. 256; 120 Ib. 225. 352; 121 Ib. 78; 122 Ib. 377. 404.

[5] 9th Aug. 1878; 242 Hans. Deb. 3rd Ser. 1640.

[6] 213 Ib. 644.

will not permit any question to be put to a minister or other member, unless it relate to such order of the day. Petitions, however, relating to the order of the day may be presented after it has been read, but not after the next question consequent upon it, has been proposed. Thus, when the order for resuming an adjourned debate on the second reading of a bill had been read, and the question had been again proposed, the Speaker would not permit petitions to be presented relating to such bill, as the adjourned debate had then been, in fact, resumed.[1] When an order of the day has been read, the minister or member having charge of the bill or proceeding, is entitled to priority in making a motion concerning it, and no other member will be allowed to interpose, unless with his consent.[2]

Notices, how given.

When a member desires to give notice of a motion, he should first examine the Order Book,[3] or the printed notices and orders of the day, which are printed with the Votes every Saturday morning.[4] When he has fixed upon the most convenient day, he should be present at the meeting of the house, and enter his name on the notice paper, which is placed upon the table. Each name upon this paper is numbered; and when the Speaker calls on the notices, at half-past four o'clock,[5] the clerk-assistant having put the numbers into a ballot-box, and shuffled them, draws them out, one by one. As each number is drawn, the name of the member to which it is attached, in the notice paper, is called by the Speaker. Each member, in his turn, then rises and states the notice he is desirous of giving, without comment or debate,[6]

[1] Dublin Consolidation Waterworks Bill; 27th Feb. 1849.

[2] Refreshment Houses Bill, March 26th 1860; 157 Hans. Deb. 3rd Ser. 1301. See also 160 Ib. 349. Sir J. Fergusson on the Representation of the People Bill, 7th June 1860; 159 Hans. Deb. 3rd Ser. 26.

[3] Since 1856, the convenient practice has been adopted, of printing the Order Book daily.

[4] Since February 1865, this paper has comprised the Order Book for the whole session. 177 Hans. Deb. 3rd Ser. 323.

[5] When the private business of the session has been advanced, public business is commenced at quarter-past four.

[6] On the 30th April 1792, the

and afterwards takes it to the table, and delivers it, fairly written out, and with the day named, to the second clerk-assistant: but only one notice may be given by a member, until the other names upon the list have been called over. When all the names have been called, any members may give further notices. In 1876, attention was called to a practice by which several members combined to give notice of the same motion, in order to secure an undue priority for that motion in the ballot. Such a practice was condemned from the chair as irregular, and an evasion of the rules of the house.[1] It is not necessary that the notice should originally comprise all the words of the intended motion: but if the subject only be stated in the first instance, the question, precisely as it is intended to be proposed, should, if possible, be given in some days before that on which it stands in the Order Book; or, at least, it should be printed at length with the Votes of the previous day.[2] And the same rule is generally applicable to notices of amendments on going into committee of supply.[3] If a motion differs materially from the terms of the notice, it can only be made with the consent of the house, or by a renewal of the notice.[4] It is not sufficient to give notice of calling attention to a question, and moving a resolution, without stating the actual words of the motion.[5] But it is not necessary to give notice of the express terms of resolutions intended to be proposed in committee of the whole

Speaker allowed Mr. Grey to make a speech on giving notice of a motion on the subject of Parliamentary representation, which was followed by a debate. He said to Mr. Pitt, "that in strictness it was not allowable; but that it was the spirit of his duty to consult the wishes of the house." Lord Sidmouth's Life, 88. On the 5th July 1872, a member on rising to give a notice, proposed to move the adjournment of the house, but was at once stopped by the Speaker; 212 Hans. Deb. 698. And so again 7th July 1876; 230 Ib. 1135.

[1] 9th March and 19th and 22nd June 1876; 227 Hans. Deb. 3rd Ser. 1718; 230 Ib. 14. 260. And again, in March 1883, the same question was raised, when the Speaker referred to his previous ruling.

[2] Vote of Thanks for services in India, 8th Feb. 1858; 148 Hans. Deb. 3rd Ser. 865.

[3] 191 Hans. Deb. 3rd Ser. 2053.

[4] Fiji Islands, 26th June 1872; 212 Hans. Deb. 3rd Ser. 219.

[5] 205 Ib. 774; 207 Ib. 143.

house.[1] Should a member desire to change the day, after he has given his notice, he must repeat it for a more distant day, it being irregular to fix an earlier day than that originally proposed in the house;[2] even if it should assume the form of an amendment to another question.[3] One member may give notice for another, not present at the time, by putting his name upon the list, and answering for him when his name is called at the ballot.[4]

It is usual to concede priority to the government in making announcements relative to public business; and on the first day of the session, members of the government are allowed to give their notices before the ballot. But they do not avail themselves of this privilege, to anticipate other members, on the days appropriated to notices.[5]

No positive rule has been laid down as to the time which must elapse between the notice and the motion: but the interval is generally extended in proportion to the importance of the subject. Notices of motions for leave to bring in bills, or for other matters to which no opposition is threatened, are constantly given the night before that on which they are intended to be submitted to the house.[6]

[1] Navigation Laws, 15th May, 1848; Sardinian Loan, 12th June 1856; Annual Budgets.

[2] Mirror of Parl. 1835, p. 275; 122 Hans. Deb. 3rd Ser. 959. 154 Ib. 537. In 1814, Mr. Brougham gave notice of an address, on the subject of the orders in council, for the 23rd June, which he afterwards changed for the 16th. Objections were taken by Mr. Rose to the irregularity of this proceeding, but were not sustained by the Speaker; Lord Brougham's Life, ii. 19. Subsequently, however, it was found necessary to introduce a stricter practice.

[3] 21 Hans. Deb. 3rd Ser. 225; 30 Ib. 8.

[4] Hans. Deb. 27th April 1843.

[5] On the 26th Feb. 1867, this privilege gave ministers a strategic advantage over their opponents. Mr. Gladstone desired to give notice of an amendment for the 28th, on going into committee to consider resolutions on the representation of the people: but before the ballot, he was anticipated by the Chancellor of the Exchequer, who rose and announced, with reference to public business, that he should not ask the house to proceed with that committee.

[6] It was ruled, July 9th 1861, that a notice could not be given, at a morning sitting, for the same evening. Mr. Speaker's Note Book; 164 Hans. Deb. 3rd Ser. 630.

Notices for unopposed returns are printed in their order, amongst the other notices: but members who enter their names in a paper for unopposed returns, upon the table of the house, are called out of their turn, before the commencement of the regular business of the day. For the purpose of gaining precedence, the more usual mode and time for giving notices are those already described; yet it is competent for a member to give a notice at a later hour, provided he does not interrupt the course of business, as set down in the Order Book; or he may give his notice, at the table, without further formality.

On the 11th April 1854 (the last day before the Easter recess), it was ordered "that members wishing to move amendments to the Oxford University Bill, do send them to the clerk of the house on or before Monday, the 24th day of this instant April, and that the same be printed and circulated with the Votes."[1]

Motions without notice.

An unopposed motion can be brought on, by consent of the house, without any previous notice: but if any member should object, it cannot be pressed.[2] If a minister moves for a return which he is prepared to present immediately, it is customary to make such a motion without previous notice.

Questions of privilege, &c.

Questions of privilege, also, and other matters suddenly arising, may be considered without previous notice; and the former take precedence, not only of other motions, but of all orders of the day. But in order to entitle a question of privilege to precedence, it must refer to some matter which has recently arisen, which directly concerns the privileges of the house, and calls for its present interposition.[3]

[1] Votes, p. 295.

[2] 4th Dec. 1640: "And it is further ordered that the business then in agitation being ended, no new motion of any new matter shall be made without leave of the house." 2 Com. J. 45; Mr. Speaker Bromley's Note Book.

[3] 12th May 1848, interference of a peer with the election for Stamford; 98 Hans. Deb. 3rd Ser. 931. 22nd May 1848, Sligo election compromise; 98 Hans. Deb. 3rd Ser. 1236. Peterborough election, appointment and nomination of committee, 18th and 21st July 1853; 108 Com. J. 691. 703. Ameer Ali Moorad's claim, 22nd Feb. 1858; 113 Com. J. 68.

Where the question is *bonâ fide* one of privilege, the house will at once entertain it before any other business. This ancient rule was thus expressed in debate by an eminent authority: "Nothing can be so regular, according to the practice of this house, as when any member brings under the consideration of the house a breach of its privileges, for the house to hear it—nay, to hear it with or without notice—whether any question is or is not before it; and even in the midst of another discussion, if a member should rise to complain of a breach of the privileges of the house, they have always instantly heard him."[1] The latter part of this statement, it need scarcely be said, is limited to breaches of privilege committed during a discussion, or so immediately before it, that no earlier opportunity of making a complaint had arisen; as, for example, an insult or assault upon a member,[2] or any sudden act of disorder.[3] In such cases, debates have been interrupted by complaints of breaches of privilege. But in other cases, equally affecting the privileges of the house, but of less immediate urgency, the matter is ordinarily brought forward, without notice, at the commencement of public business.[4] Such priority is conceded on the assumption that the earliest opportunity has been taken for bringing such a question before the house, which precludes previous notice; and that the dignity of the house demands its immediate consideration.

When such a question is not at once disposed of, but a future day is appointed for its consideration, it has been

Lisburn election, 21st April 1864; 119 Ib. 184. Azeem Jah (forged signatures to petitions), 8th May 1865; 120 Ib. 247. King's County election, 12th Feb. 1866; 121 Ib. 55. Complaint of Mr. Plimsoll's book, 20th Feb. 1873. Complaint of Mr. Sullivan against Dr. Kenealy, 11th April 1877; 132 Ib. 144. Forged signatures to petitions, 21st March 1878; 238 Hans. Deb. 3rd Ser. 1741. Clare writ, 17th April 1879; see Mr. Speaker's ruling, 245 Hans. Deb. 518, &c.

[1] Mr. Williams Wynn, Feb. 11th, 1836; 31 Hans. Deb. 3rd Ser. 274.

[2] 79 Com. J. 483.

[3] 65 Ib. 134.

[4] Forgery of a petition, 1829, 84 Com. J. 187. Complaints against newspapers, 93 Ib. 306; 106 Ib. 320, &c.

customary, on that day also, to give it priority. Thus, on Tuesday, the 16th February 1836, the consideration of a petition relating to a corrupt agreement between Mr. O'Connell and Mr. Raphael, in connexion with the Carlow election, stood ninth order of the day, but was taken before all the notices of motions which had precedence of orders on that day.[1] So also on the 5th June 1837, similar precedence was given to the consideration of petitions from the printers of the house, on a matter of privilege.[2] On the 6th May 1842, precedence was given to Mr. Roebuck's motion for a committee to inquire into election compromises.[3] Again, on Friday 26th April 1844, the consideration of the complaint against Mr. Ferrand for a breach of privilege stood eleventh order of the day, but was taken first; and, not to enumerate other intermediate cases, on Tuesday the 1st June 1858, precedence was given to the consideration of the petition of a person in custody, praying for his discharge, though standing sixth order of the day on a notice night; and again, on the following day, the like precedence was given to a second petition from the same person.[4] In 1859, other questions connected with election compromises were allowed precedence.[5] On the 5th July 1860, Lord Palmerston proposed resolutions founded on the report of the committee on Tax Bills, as a matter of privilege, before the orders of the day: but on the 17th, Lord Fermoy having given notice of another resolution on that subject, the Speaker held that he was not entitled to precedence, his object being merely to review a former determination of the house. On the 22nd July 1861, a motion being proposed concerning the conduct of a member, in connection with a joint-stock company, the Speaker said it was doubtful whether it was properly a matter of privilege:

[1] 91 Com. J. 24. 42, and Votes; 31 Hans. Deb. 3rd Ser. 272 *et seq.*

[2] 92 Com. J. 436.

[3] 97 Ib. 263.

[4] Case of Washington Wilks: Votes, 1st and 2nd June 1858.

[5] Mr. Roebuck (Chiltern Hundreds), 155 Hans. Deb. 3rd Ser. 945, &c.; Mr. Bright (Pontefract election), Ib. 1254; 114 Com. J. 357. 362. 376.

but as it affected the character of a member, it could be proceeded with, if it was the pleasure of the house. The member concerned having expressed his desire that the discussion should be proceeded with, the motion was made at once.[1]

It has been said that a question of privilege is, properly, one not admitting of notice: but where the circumstances have been such as to enable the member to give notice, and the matter was, nevertheless, *bonâ fide* a question of privilege, precedence has still been conceded to it.[2] Yet the giving notice has sometimes been a test of the character of the motion, and of its title to precedence on the ground of privilege. Thus precedence has always been given to a motion for a new writ, and such a motion is ordinarily made without notice:[3] but when the house had, from time to time, resolved that where a seat had been declared void, on the ground of bribery and treating, no motion for a new writ should be made without previous notice, it was held that a motion for a new writ, under those circumstances, was not entitled to the customary precedence on the ground of privilege.[4] But in 1874 and 1875, and in subsequent years, precedence was expressly given to such motions, before orders of the day and notices, by resolutions of the house.[5] On the 24th March 1882, precedence was claimed for a motion for a new writ for the borough of Northampton, but the Speaker stated that

[1] 164 Hans. Deb. 3rd Ser. 1285.

[2] Stamford borough, 12th May 1848; 98 Hans. Deb. 3rd Ser. 931. Sligo election compromise, 22nd May 1848; 98 Hans. Deb. 3rd Ser. 1236. Peterborough election, 18th and 21st July 1853; 108 Com. J. 691. 703. Expulsion of James Sadleir, 24th July 1856, and 16th February 1857; 143 Hans. Deb. 3rd Ser. 1386; 144 Ib. 702. Mr. Townsend's bankruptcy, 1858; 113 Com. J. 229. Case of Mr. Bradlaugh, 11th and 12th May 1881; 261 Hans. Deb. 3rd Ser. 218. 282. 431.

[3] See Speaker's ruling, 25th Aug. 1881; 265 Hans. Deb. 386.

[4] But on the 23rd March 1860, Mr. Duncombe having given notice of a motion to issue a new writ for Norwich, at half-past four o'clock, claimed the indulgence of the house to make his motion at that time, and, being in ill-health, was permitted to proceed, instead of waiting to a later hour.

[5] 129 Com. J. 141; 130 Ib. 23; 137 Ib. 20, &c.

such motions were founded upon recent events, *e. g.*, the death of a member, his acceptance of office, or the report of election judges: but here it was designed to raise an irregular debate upon the claim of Mr. Bradlaugh to take the oath, and the motion was not therefore entitled to privilege.[1] As precedence is naturally desired by members, care has been taken not to extend that claim to any motion which does not strictly relate to an urgent matter of privilege, properly so called;[2] and many motions, more or less affecting privilege, have been brought on in their turn, with other notices of motions.[3] A question of order cannot be treated as a question of privilege.[4]

Adjourned debates on questions of privilege.

Where debates have been adjourned upon urgent questions of privilege, similar precedence has been given to the adjourned debates. Thus, on the 8th June 1837, the adjourned debate on the petitions of the printers of the house, relating to Stockdale's action, was resumed before all other business;[5] and in 1840, adjourned debates upon the same important question of privilege were repeatedly renewed at the commencement of public business.[6] So also, on Tuesday, 27th February 1838, the adjourned debate on the question of privilege arising out of Mr. O'Connell's case, was taken first, before all the notices which had precedence on that day. And, again, on Tuesday, 9th May 1865, the adjourned debate on the consideration of the report of the committee on the forgery of signatures to the petitions in favour of the

[1] 267 Hans. Deb. 3rd Ser. 1821.

[2] 146 Hans. Deb. 3rd Ser. 769; 159 Ib. 2035; 174 Ib. 190. 306; 187 Ib. 14; 235 Ib. 829; 239 Ib. 671; 252 Ib. 667. 788; 261 Ib. 694. 1785; 262 Ib. 1936; 266 Ib. 788; Ib. 7th February, 1881.

[3] Mr. Isaac Butt's notice relating to the "Times" newspaper, 7th February 1854; 109 Com. J. 40: Mr. C. Foster's notice for a committee on the forgery of signatures to petitions, 23rd March 1865; 120 Ib. 156: Mr. Callan's motion for a committee to inquire how Mr. Newdegate's name was affixed to a petition, 7th April 1876, &c.

[4] 2nd February 1881; 258 Hans. Deb. 3rdSer. 8. Mr. Speaker's Note Book.

[5] 92 Com. J. 450; 38 Hans. Deb. 3rd Ser. 1249.

[6] 95 Com. J. 13. 15. 19. 23. 70; 51 Hans. Deb. 3rd Ser. 196. 251. 358. 422; 52 Ib. 7.

claims of Azeem Jah, which stood as the third order of the day, was resumed before all the notices, and other orders of the day.[1] So, also, in Mr. Plimsoll's case, on the 29th July 1875.[2] It is now the practice to place an order of the day, relating to an unquestionable matter of privilege, above, and apart from, all the other orders, and without any number; and this order is called separately, when any motion is also to be taken before the other orders of the day.[3] And a motion relating to the business of the house will be allowed precedence of an order of the day relative to privilege, if proposed at the proper time.[4] But in some other cases of privilege, of a less urgent character, it has been ruled that adjourned debates were not entitled to precedence.[5]

Motions taken at half-past four o'clock.

It may here be noticed that precedence is given, by usage, to a particular class of motions relating to the business of the house, which are usually set down for half-past four o'clock; and are disposed of before the commencement of the public business appointed for the day. In this class are comprehended motions for the adjournment of the house, at its rising, beyond the next day,[6] the postponement of the orders

[1] 120 Com. J. 252.

[2] 226 Hans. Deb. 3rd Ser. 178; see also 238 Ib. 1741.

[3] On the 3rd July 1882, Mr. Gladstone moved the postponement of the orders of the day, after a question of privilege had been disposed of; 271 Hans. Deb. 1303.

[4] 252 Hans. Deb. 3rd Ser. 422.

[5] Bridport election; 63 Hans. Deb. 3rd Ser. 561. Aylesbury election, 5th May 1851.

[6] On the 18th May 1847, upon a motion for adjournment over the Derby day, the Speaker said; "The practice has always been to take these notices for the adjournment of the house early in the evening, for the convenience of honorable members, because they cannot otherwise tell on what day the house will sit, and might not know for what day to fix notices." 92 Hans. Deb. 3rd Ser. 1052. And again on the 23rd May 1848, and the 22nd May 1849, it was ruled by the Speaker that a notice for the adjournment of the house (for the Derby day) took precedence of other motions on a notice day. 105 Hans. Deb. 3rd Ser. 843. These precedents were again followed without objection in 1850, 1851, 1852 and 1858. From 1856 the adjournment was generally moved by the government; but on the 3rd June 1878 (the government having intimated its intention not to make the usual motion), Mr. Chaplin gave notice of it, and the Speaker, on being appealed to, stated that according to precedents he would have precedence. Accordingly, on

Votes of thanks.

of the day, leave of absence to members, and other formal motions relating to public business.[1] It is usual to give precedence, as a matter of courtesy, to a motion for a vote of thanks.[2]

Leave to make motions.

Entries are occasionally found in the Journals, of leave being given to make a motion.[3] In these cases, it appears that all the orders of the day had been previously disposed of; and that the house allowed members to bring on motions which they had not entitled themselves to make, according to the ordinary regulations. But as unopposed motions only can be made without previous notice, they are now offered with the general assent of the house, and without any formal leave being given.

Notices expunged.

As motions for which notices have been given, need not be actually made when the time arrives, the Order Book has sometimes been used for the expression of opinions, not intended to be ultimately proposed for adoption. This is a deviation from the true object of the Order Book; but it is not a practical evil of much importance, nor is there, perhaps, any remedy for it: but in resorting to this practice, members must be careful lest they give offence to the house by unbecoming

the following day, he moved the adjournment before the commencement of public business, at a morning sitting, without objection (240 Hans. Deb. 1076. 1171), and the same practice has since been observed. 136 Com. J. 276, &c.

[1] A notice relating to public business, standing on the notice paper for the evening sitting, has been allowed to be made at two o'clock, with the general consent of the house, declared without a dissentient voice, 27th July 1875. 226 Hans. Deb. 3rd Ser. 94. 127.

[2] 24th April 1849. Operations in the Crimea, 15th December 1854. Operations in India, 8th February 1858; 148 Hans. Deb. 3rd Ser. 865. Afghanistan, 4th August 1879; 134 Com. J. 397. Egyptian Expedition, 26th October 1882; 137 Com. J. 492. On this occasion, the vote of thanks took precedence of the further discussion of the new rules of procedure, to which priority had been given over all orders of the day and notices of motions, by a special order of the house.

[3] 75 Com. J. 155, 156; 85 Ib. 107; 86 Ib. 857. There was an order of the house, 25th November 1695, that no new motion be made after one o'clock. This probably occasioned the practice of giving leave to make motions, although the order has long since been inapplicable to modern usage and regulations. See also 1 Com. J. 45.

expressions; for the notice may, for such a cause, be expunged from the notice paper.[1] In one case, the Speaker having observed, in a notice, unbecoming expressions affecting religion, directed them to be altered, and called the attention of the house to the alteration.[2] The notice paper being published by authority of the house, a notice of a question infringing any of its rules, or otherwise irregular or informal, is corrected by the clerks at the table, before it is printed, —if possible in communication with the member himself, —and, in cases of special difficulty, under the direction of Mr. Speaker.[3] If a notice, when publicly given, is obviously irregular or unbecoming, the Speaker will interpose, and the notice will not be received in that form;[4] or if an objection be raised to a notice of motion in the Order Book, the Speaker will decide as to its regularity; and the notice will be amended accordingly, or withdrawn.[5]

Notice refused to be received.

On the 7th June 1858, the House of Lords adopted a novel and very effectual course in regard to a notice. The Lord Kingston having proposed to renew a notice of putting certain questions, the house resolved "that the said questions have been sufficiently answered, and ought not to be renewed;"[6] and, accordingly, the proposed notice was not received by the clerk. And on the 12th March 1883, Lord Stanley of Alderley having given notice of certain questions, it was resolved "that such questions be not put."[7]

Dropped notices.

If a notice of motion be dropped, by the adjournment of the house, before it has been disposed of, it is usually renewed and put down in the notice paper for some other day, under

[1] 90 Com. J. 435.

[2] 12th Feb. 1861; 161 Hans. Deb. 3rd Ser. 342.

[3] 188 Hans. Deb. 3rd Ser. 1066. 206 Ib. 468; 207 Ib. 1881; 212 Ib. 700; 223 Ib. 607; 24th May 1878; 240 Hans. Deb. 643; 5th July 1880; 253 Ib. 1632; 16th June 1882; 270 Ib. 1409.

[4] Mr. Rearden's notice, 22nd May 1868; 192 Hans. Deb. 3rd Ser. 711; 212 Ib. 706; 223 Ib. 607; Dr. Kenealy, 5th April 1878; 239 Ib. 669; and similar cases, 15th July and 25th Aug. 1881, and 2nd Nov. 1882; 263 Ib. 1012; 265 Ib. 880; 274 Ib. 632.

[5] 228 Hans. Deb. 3rd Ser. 1183; 250 Ib. 1313; 267 Ib. 388.

[6] Lords' Minutes, 7th June 1858.

[7] Lords' Minutes, 191.

the same conditions as an original notice. If, however, it be merely a motion for an unopposed return, a member is permitted to make it on the next sitting day, without renewing the notice.

Motions made.

When a member is at liberty to make a motion, he may speak in its favour, before he actually proposes it: but a speech is only allowed upon the understanding, 1st, that he speaks to the question; and, 2ndly, that he concludes by proposing his motion formally. In the case of unopposed returns, or other formal or uncontested business, one member is permitted, by courtesy, to bring forward the motion of another: but it has been pointed out from the chair that it would be highly inconvenient to extend this practice to motions open to controversy and debate;[1] nor has the making of motions by proxy ever received parliamentary sanction. In the absence of one minister, however, another minister has been allowed to make motions standing in his name,[2] or to move stages of opposed bills.[3]

Questions moved and seconded.

In the upper house, any lord may submit a motion for the decision of their lordships without a seconder,—the only motion requiring a seconder, by usage, being that for the address in answer to the Queen's speech: but in the Commons, after a motion has been made, it must be seconded by another member; otherwise it is immediately dropped, and all further debate must be discontinued, as no question is

[1] Church Rates Abolition Bill, 11th Feb. 1862 (Sir C. Douglas). Colonel Dunne, and the nomination of the Committee on Holyhead Harbour, May 19th 1863.

[2] On the 12th May 1864, in the absence of Lord Palmerston, Sir G. Grey was permitted, on behalf of the government, to move the postponement of the orders of the day, and make a motion relating to inspectors of schools. On the 28th Nov. 1867, in the absence of the Chancellor of the Exchequer, Mr. Hunt, the secretary of the Treasury, made his financial statement in Committee of Ways and Means. On the 24th Feb. 1881, in the absence of Mr. Gladstone, First Lord of the Treasury, objection being taken to the proposal of a motion relating to public business, standing in his name, by Lord Hartington, Mr. Speaker ruled that it would be competent for any minister of the crown to make that motion; 258 Hans. Deb. 3rd Ser. 1664.

[3] 176 Hans. Deb. 2034.

before the house.[1] When a motion is not seconded, no entry appears in the Votes, as the house is not put in possession of it, and *res gestæ* only are entered. In the case of an original motion, the Speaker satisfies himself that the motion has been formally seconded, before he puts the question: but where an unopposed return is moved, or other formal motion made, the formality of seconding the motion is not generally observed, but is taken to be tacitly complied with. An order of the day may be moved without a seconder.

Motions not seconded.

The motion should be carefully prepared, and placed, in print or writing, in the Speaker's hands; as, except in the event of any informality in the form of the motion, the Speaker proposes the question in the words of the mover. A member will be allowed to make verbal alterations in the original terms of his motion; but not such substantial changes as would vitiate the notice, except by leave of the house.[2] Formerly it was customary for the Speaker, when he thought fit, to frame a motion out of the debate.[3] This ancient custom, however, was open to abuses and misconception,[4] and has long since been disused. On the 15th February 1770, Sir Fletcher Norton revived it in the debate on the Sudbury election petition. No notice was taken of it at the moment, but it did not afterwards escape animadversion;[5] and the practice has not since been reverted to.

The motion to be in print or writing.

In 1794, Earl Stanhope had proposed a resolution with a long preamble, which, on putting the question, the lord

Objectionable words omitted from a motion.

[1] But see Debates, 8th February 1844.

[2] 148 Hans. Deb. 3rd Ser. 719; 161 Ib. 854; 212 Ib. 219.

[3] Scobell, 22; 2 Hatsell, 112.

[4] Bishop Burnet relates of Mr. Speaker Seymour, that, "if anything was put, when the Court party was not well gathered together, he would have held the house from doing anything by a wilful mistaking, or misstating the question. By that he gave time to those who were appointed for that mercenary work, to go about and gather in all their party. And he would discern when they had got the majority; and then he would very fairly state the question, when he saw he was sure to carry it." 2 Burnet's Own Time, 72.

[5] 1 Cavendish Deb. 458.

chancellor had omitted.[1] On a subsequent day, complaint was made of this omission, and a question was proposed by Lord Lauderdale, "That any motion proposed by any lord of Parliament, and given to the Speaker of that house, ought to be put in the words given by the mover, and the question of content or not content decided upon it in that form." After a debate, from which it appeared that the words omitted had been of an objectionable character, and that the lord chancellor had collected the unanimous opinion of the house for their omission, the question was superseded by adjournment.[2]

Irregular questions not put from the chair.

If any motion or amendment be offered, in contravention of the rules and orders of the house, the Speaker will decline to put the question, or will call the attention of the house to the irregularity; as if the question had already been decided in the same session,[3] or required the recommendation or consent of the Crown, which had not been signified:[4] or anticipated the discussion of another motion appointed for a later day,[5] or were otherwise out of order.[6] But the formal interposition of the Speaker is ordinarily avoided, by a private intimation to the member who has given notice of an irregular motion.

Proposed by the Speaker.

In the Lords, when a motion has been made, a question is generally proposed "that that motion be agreed to:" but on the stages of bills, and on some other occasions, the motion is put directly as a question. In the Commons, when the motion has been seconded, it merges in the question, which is then proposed by the Speaker to the house, and read by him; after which the house are said to be in possession of the question, and must dispose of

[1] 31 Parl. Hist. 149; 6 Lord Campbell's Lives of the Chancellors, 271.

[2] 31 Hans. Parl. Hist. 197.

[3] 95 Com. J. 495; 76 Hans. Deb. 3rd Ser. 1021; 201 Ib. 824; 214 Ib. 287.

[4] 2 Hatsell, 168, *n.*; 59 Com. J. 335; 63 Ib. 266; 164 Hans. Deb. 997; 241 Ib. 1591.

[5] 207 Hans. Deb. 3rd Ser. 500. 1640; 224 Ib. 915.

[6] 112 Com. J. 157; 115 Ib. 494; 20th Jan. 1880; 257 Hans. Deb. 1040.

it in one way or another, before they can proceed with any other business. At this stage of the proceeding, the debate upon the question arises in both houses. If the entire question be objected to, it is opposed in debate: but no amendment or form of motion is necessary for its negation; for when the debate is at an end, the Speaker puts the question, and it is resolved simply in the affirmative or negative. The precise mode in which the determination of the house is expressed and collected, will be explained hereafter.[1]

When debate arises.

It may happen, however, that it is desired by members to avoid any distinct expression of opinion; in which case it is competent for the majority of the house to evade the question in various ways: but the member who proposed it, can only withdraw it by leave of the house, granted without any negative voice.[2] This leave is signified, not upon question, as is sometimes erroneously supposed, but by the Speaker taking the pleasure of the house. He asks, "Is it your pleasure that this motion be withdrawn?" If no one dissents, he says, "The motion is withdrawn:" but if any dissentient voice be heard, he proceeds to put the question,[3] which, under such circumstances, is ordinarily negatived without a division.[4] Sometimes the house have refused to allow a motion to be withdrawn: but after further debate have consented to its withdrawal. Occasionally a motion is, by leave, withdrawn, and another motion substituted, in order to meet the views of the house, as expressed in debate: but that course can only be taken with the general assent of the house.[5]

Motions, by leave, withdrawn.

Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment

Withdrawing motions and amendments.

[1] See *infra*, p. 310, and Chapter XII.—Divisions.

[2] A motion cannot be withdrawn in the absence of the member who proposed it; 159 Hans. Deb. 3rd Ser. 1310.

[3] 247 Ib. 841.

[4] 186 Ib. 887.

[5] See discussion on Fiji Islands, 25th June 1872; 212 Hans. Deb. 3rd Ser. 219. Church Patronage, 1877; 132 Com. J. 301.

has been first withdrawn, or negatived;[1] as the latter, until disposed of, is in fact more immediately under consideration, having been interposed after the original question was proposed. Nor can an amendment be withdrawn in the absence of the member who had proposed it.[2]

Question superseded.

The modes of evading or superseding a question are,—1, by adjournment of the house; 2, by motion "that the orders of the day be read;" 3, by moving the previous question; and 4, by amendment.

By adjournment.

1. In the midst of the debate upon a question, any member may move "that this house do *now* adjourn," not by way of amendment to the original question, but as a distinct question, which interrupts and supersedes that already under consideration. It need scarcely be explained that such a motion cannot be made while a member is speaking, but can only be offered by a member who, on being called by the Speaker in the course of the debate, is in possession of the house. If this second question be resolved in the affirmative, the original question is superseded; the house must immediately adjourn, and all the business for that day is at an end.[3] In the Commons, the motion for adjournment, in order to supersede a question, must be simply that the house do *now* adjourn: it is not allowable to move that the house do adjourn to any future time specified; nor to move an amendment to that effect, to the question of adjournment.[4] But in the Lords, a future day may be specified in the motion for adjournment.[5] A motion for the adjournment of the debate, upon a question for the adjournment of the house, being an obvious solecism, will not be entertained.[6] The house may also be suddenly adjourned, even while a

[1] 227 Hans. Deb. 3rd Ser. 787; 230 Ib. 1026.

[2] 151 Ib. 952.

[3] Third reading of Justices of the Peace Qualification Bill, 10th July 1855; 110 Com. J. 367. Volunteers (Ireland) Bill, 17th July 1860; 115 Ib. 393.

[4] 2 Hatsell, 113–115.

[5] Supreme Court of Judicature Act, Address, 25th Feb. 1881; Lords' Minutes, 306.

[6] Speaker's ruling, 5th Mar. 1857; 144 Hans. Deb. 3rd Ser. 1906.

member is speaking, by notice being taken that forty members are not present; and an adjournment, caused in that manner, has the effect of superseding a question, in the same way as a formal question to adjourn, when put and carried. In either case the original question is so entirely superseded, that if it has not yet been proposed to the house by the Speaker, it is not even entered in the Votes, as the house was not fully in possession of the question before the adjournment. But where the question is superseded in this manner, after it has been proposed from the chair, the question, having been entered on the Minutes, is, of course, printed in the Votes.[1] If the second reading or other stage of a bill be superseded by adjournment, the bill disappears from the Order Book, until the house appoints another day for proceeding with it.

Motions for adjourning the house and the debate.

If a motion for adjournment be negatived, it may not be proposed again without some intermediate proceeding;[2] and, in order to avoid any infringement of this rule, it is a common practice for those who desire to avoid a decision upon the original question, on that day, to move alternately that "this house do now adjourn," and "that the debate be now adjourned."[3] But a member who has moved the adjournment of the house is not entitled to move the adjournment of the debate, as he has already spoken to the main question.[4] The latter motion, if carried, merely defers the decision of the house, while the former, as already explained, supersedes the question altogether: yet members who only desire to enforce the continuance of the debate on another day, often vote for an adjournment of the house, which, if carried, would supersede the question which they are prepared to support. This distinction should always be

[1] This distinction is not explained by Hatsell (ii. 115).

[2] 2 Hatsell, 109, *note*. Lord Colchester's Diary, ii. 129.

[3] See proceedings, Nov. 23rd, 1819; 41 Hans. Deb. 136. Ecclesiastical Titles Bill, 12th May 1851; 106 Com. J. 216. Election Petitions Bill, 29th June 1857. Night Poaching Prevention Bill, 1st Aug. 1862; 117 Ib. 388; Protection of Person and Property (Ireland) Bill, 1881; 136 Ib. 49–51, &c.

[4] 184 Hans. Deb. 3rd Ser. 1450.

borne in mind, lest a result should follow that is widely different from that anticipated. Suppose a question to be opposed by a majority, and that the minority are anxious for an adjournment of the debate: but that, on the failure of a question proposed by them to that effect, they vote for an adjournment of the house, the majority have only to vote with them, and carry the adjournment, when the obnoxious question is disposed of at once, and its supporters have themselves contributed to its defeat.[1] Restrictions have lately been placed upon the use of these motions, for purposes of obstruction, which will be treated among the rules of debate.[2]

By reading the orders of the day.

2. On a day upon which notices of motions have precedence, a motion "that the orders of the day be now read," is also permitted to interrupt the debate upon a question; and, if put by the Speaker, and carried in the affirmative, the house must proceed with the orders of the day immediately, and the original question is thus superseded.[3] A motion for reading a particular order of the day, however, will not be permitted to interrupt a debate; and when the house are actually engaged upon one of the orders of the day, a motion for reading the orders of the day is not admissible, as the house are already doing that which the motion, if carried, would oblige them to do. Sometimes questions have been superseded by *amendments* for reading the other orders of the day. On the 10th May 1852, the orders of the day having been postponed until after the motion for assigning the vacant seats of St. Alban's and Sudbury, an amendment was made to the question for leave to bring in the bill, by leaving out all the words after "that," in order to add the words "this house do pass to the other orders of the day."[4] And on the 19th May 1852, on resuming an adjourned debate on the Colonial Bishopricks Bill, an amendment was made to the question for the second

[1] An instance of this occurred on the 23rd March 1848, on a motion relative to the game laws; 97 Hans. Deb. 3rd Ser. 963; and again on the 2nd of March 1875, on Mr. Fawcett's motion relating to education in rural districts.

[2] Chapter XI.—Rules of Debate.

[3] 77 Com. J. 356; 111 Ib. 167.

[4] 107 Ib. 205.

reading, by leaving out all the words after "that the," and adding, "other orders of the day be now read."[1] A question has also been superseded by an amendment for reading a particular order of the day.[2]

Previous question.

3. The previous question is an ingenious method of avoiding a vote, upon any question that has been proposed: but its technical name does little to elucidate its operation. When there is no debate, or after a debate is closed, the Speaker ordinarily puts the question as a matter of course, without any direction from the house: but, by a motion for the previous question, this act of the Speaker may be intercepted and forbidden. In the Lords, the Lord Speaker puts the question, "whether the original question be now put." In the Commons, the words of this motion are, "that that question be *now* put;" and those who wish to avoid the putting of the main question, vote *against* the previous (or latter) question; and, if it be resolved in the negative, the Speaker is prevented from putting the main question, as the house have thus refused to allow it to be put.[3] It may, however, be brought forward again on another day; as the negation of the previous question merely binds the Speaker not to put the main question at that time. If the previous question be put, and resolved in the affirmative, no words can be added to, or taken from, the main question by amendment; nor is any further debate allowed, or motion for adjournment, before the question is put, as the house have resolved "that that question be *now* put," and it must accordingly be put at once to the vote.[4] The anomaly of this proceeding is very obvious. The members who move and second the previous question, which is put in the affirmative form, yet vote

[1] 107 Com. J. 225.

[2] Negro Apprenticeship, 30th March 1838; 93 Com. J. 418. Mortmain Bill, 28th June 1854; 109 Ib. 342.

[3] For examples of this question, see 71 Lords' J. 581; 74 Ib. 87; Lord Stratheden's motion respecting Russia and the Porte, 28th Jan. 1878; 110 Lords' J. 22.

[4] 2 Hatsell, 122, *n.* Lex Parl. 292. Harbours of Refuge, 19th June 1860; 115 Com. J. 316. See also 2 Lord Sidmouth's Life, 136. 1 Twiss, Life of Eldon, 232.

against it, and are generally appointed tellers for the "noes"; being thus the most prominent opponents of the motion which they have themselves proposed. In 1778, the congress of the confederation of the United States adopted the "previous question" in a negative form, *i. e.*, "that the main question be *not* now put," which appears to be a superior form to that used in this country, and is still followed, though with different objects, in America.[1] No amendment may be proposed to the previous question, which, in this respect, stands in the same position as a question of adjournment.

Previous question cannot be amended.

Previous question on stages of bills.

The previous question is, perhaps, less applicable to the different stages of bills than to other questions: but it has been frequently resorted to.[2] The first instance of its being moved on the second reading of a bill occurred on the 10th June 1858, on the second reading of the County Franchise Bill;[3] and this precedent has since been followed on several occasions.[4] The previous question cannot be moved upon an amendment,[5] nor upon any question in a committee of the whole house, or in a Select Committee.[6]

The last two questions, viz., for reading the orders of the day and the previous question, may both be superseded by a motion for adjournment; for the latter may be made at any

[1] In America, the effect of the previous question is immediately to suppress all further discussion of the main question; Cushing, Law and Practice of Legislative Assemblies, 1855, pp. 553, 554. And see Com. J. 25th May 1604, 22nd Jan. 1628, and 6th Sept. 1641, where the previous question appears to have been put in a simpler form.

[2] 1 Com. J. 226. 825; 7 Ib. 420; 8 Ib. 421; 10 Ib. 762; 13 Ib. 292; 17 Ib. 310; 26 Ib. 270. 594; 30 Ib. 418 (that a bill be recommitted); 99 Ib. 504 (that Mr. Speaker do now leave the chair).

[3] 113 Com. J. 220.

[4] Second reading of County Franchise Bill, Borough Franchise Bill, and Presentment Sessions (Ireland) Bill, 1861; 116 Ib. 103. 135. 177. Second reading of County Franchise Bill, 1864, and Borough Franchise Bill, 1864 and 1865; 119 Com. J. 160. 234; 120 Ib. 247. Second reading of Municipal Elections (Cumulative Vote) Bill, 14th July 1875; 130 Com. J. 356; second reading of Fixity of Tenure (Ireland) Bill, 30th June 1880; 135 Com. J. 261, &c.

[5] 2 Hatsell, 116.

[6] The report of the Committee on Privilege (Mr. Gray), in 1882, was recommitted, on account of an oversight in its proceedings, in regard to this rule; 137 Com. J. 509.

time (except, as already stated, when the previous question has been resolved in the affirmative), and must always be determined before other business can be proceeded with. The debate upon the previous question may also be adjourned;[1] as there is no rule or practice which assigns a limit to a debate, even when the nature of the question would seem to require a present determination. But when a motion has been made for reading the orders of the day, in order to supersede a question, the house will not afterwards entertain a motion for the previous question; as the former motion was itself in the nature of a previous question.

By amendments.

4. The general practice in regard to amendments will be explained in the next chapter: but here such amendments only will be mentioned as are intended to evade an expression of opinion upon the main question, by entirely altering its meaning and object. This may be effected by moving the omission of all the words of the question, after the word "that" at the beginning, and by the substitution of other words of a different import. If this amendment be agreed to by the house, it is clear that no opinion is expressed directly upon the main question, because it is determined that the original words "shall not stand part of the question;" and the sense of the house is afterwards taken directly upon the substituted words, or practically upon a new question. There are many precedents of this mode of dealing with a question:[2] but the best known in Parliamentary history are those relating to Mr. Pitt's administration, and the peace of Amiens, in 1802. On the 7th May 1802, a motion was made in the Commons, for an address, "expressing the thanks of this house to his Majesty for having been pleased to remove the Right Hon. W. Pitt from his councils;" upon which an amendment was proposed and carried, which left out all the

[1] 131 Com. J. 45, &c.

[2] 24 Com. J. 650; 30 Ib. 70; 52 Ib. 203; 93 Ib. 418. Protection of Life (Ireland) Bill, 30th March 1846. Navigation Laws, 29th May 1848. Mr. Churchward, 19th March 1867. Employment of Indian Troops in Europe, 1878; 133 Com. J. 240, &c.

words after the first, and substituted others in direct opposition to them.[1] Not only was the sense of the original question entirely altered by this amendment, but a new question was substituted, in which the whole policy of Mr. Pitt was commended. Immediately afterwards an address was moved in both Houses of Parliament, condemning the treaty of Amiens, in a long statement of facts and arguments. In each house an amendment was moved and carried, by which all the declamation in the proposed address was omitted, and a new address resolved upon, by which Parliament was made to justify the treaty.[2]

This practice has often been objected to as unfair, and never with greater force than on these occasions. It is natural for one party, commencing an attack upon another, to be discomfited by its recoil upon themselves, and to express their vexation at such a result: but the weaker party must always anticipate defeat, in one form or another. If no amendment be moved, the majority can negative the question itself, and affirm another in opposition to the opinions of the minority. On the very occasion already mentioned, of the 7th May 1802, after the address of thanks for the removal of Mr. Pitt had been defeated by an amendment, a distinct question was proposed and carried by the victorious party, "That the Right Hon. W. Pitt has rendered great and important services to his country, and especially deserves the gratitude of this house."[3] Thus, if no amendment had been moved, the position of Mr. Pitt's opponents would have been but little improved, as the majority could have affirmed or denied whatever they pleased. It is in debate alone that a minority can hope to compete with a majority. The forms of the house can ultimately assist neither party: but, so far as they

[1] 57 Com. J. 419. 36 Hans. Parl. Hist. 598–654. 3 Lord Stanhope's Life of Pitt, 375–379.

[2] 57 Com. J. 450. 43 Lords' J. 603. 36 Hans. Parl. Hist. 686.

[3] A case precisely similar occurred on the 14th May 1806, when a vote of censure on Earl St. Vincent's naval administration having been negatived, was followed by a vote of approbation immediately moved by Mr. Fox. 7 Hans. Deb. 208.

offer any intermediate advantage, the minority have the greatest protection in forms, while the majority are met by obstructions to the exercise of their will.

Questions interrupted.

These are the four modes by which a question may be intentionally avoided or superseded: but the consideration of a question is also liable to casual interruption and postponement from other causes; as, by a matter of privilege; by words of heat between members in debate; by a question of order and consequent proceedings;[1] by a message from the Queen or lords commissioners, requiring the attendance of the house in the House of Peers;[2] by an answer to an address;[3] by a message from the other house;[4] by a conference with the Lords;[5] by a report of reasons for disagreeing to Lords' amendments;[6] by the clerk of the Crown amending a return;[7] or by a report of the serjeant-at-arms that he had taken a member, or other person, into custody.[8] A motion for reading an Act of Parliament, an entry in the Journal, or other public document, which is not uncommon as a preliminary to other proceedings, has, also, in some cases, been interposed: but the practice by which such documents have been permitted to be read, after the commencement of the debate,[9] though not absolutely without recognition in modern

[1] See Chapter XI. (RULES OF DEBATE).

[2] 93 Com. J. 227; 106 Ib. 443. On the 20th April 1863, the reading of a petition was so interrupted, and was resumed on the return of the Speaker from the Lords.

[3] 108 Ib. 438; 125 Ib. 377. 17th Dec. 1878. This rule, however, does not apply to a message from the Crown. On the 5th June 1866, a message relating to the marriage of Princess Mary of Cambridge was brought up between one motion and another: but not so as to interrupt a debate. A message is clearly entitled, in principle, to the same courteous reception as an answer to an address: but it might be very inconvenient to permit it to interrupt a debate, as it is customary at once to found a motion upon it, which might give rise to discussion.

[4] By the recent practice, a message brought by the clerk does not ordinarily interrupt the business under discussion; but there are occasions when such an interruption is desired. 126 Com. J. 57. See Chapter XVI.

[5] 98 Com. J. 347. 484.

[6] Ground Game Bill, 3rd Sept. 1880; 135 Com. J. 431.

[7] 93 Com. J. 276. 308.

[8] 135 Ib. 236.

[9] 2 Hatsell, 121.

times,[1] may be regarded as obsolete. In one case certain acts were directed to be read, by way of amendment to the original question.[2] An interruption, thus commenced, is sometimes continued by further interruptions, before the resumption of the debate.[3]

These proceedings, however, while they obstruct and delay the decision of a question, do not alter its position before the house; for, directly they are disposed of, the debate is resumed at the point at which it was interrupted. In the House of Commons, another interruption was sometimes caused by moving that candles be brought in: but, by a Standing Order of the 6th February 1717, it was ordered, "That when the house, or any committee of the whole house, shall be sitting, and daylight be shut in, the serjeant-at-arms attending this house do take care that candles be brought in, without any particular order for that purpose."[4] And this order, again, has been practically superseded by the instantaneous illumination of the house, at the proper time.

Opposed business after half-past twelve.

Since 1872, the house has endeavoured to limit the transaction of opposed business after midnight, and a resolution, often renewed and amended, has now been permanently adopted.

Orders of the day and notices after half-past twelve.

By Standing Order, 18th February 1879, as amended 9th May and 17th and 20th November 1882,—

"except for a money bill, no order of the day or notice of motion be taken after half-past twelve of the clock at night, with respect to which order or notice of motion a notice of opposition or amendment shall have been printed on the notice paper, or if such notice of motion shall only have been given the next previous day of sitting, and objection shall be taken when such notice is called. That motions for the appointment or nomination of Standing Committees, and proceedings made in accordance with the provisions of any Act of Parliament or Standing Order, motions for leave to bring in bills, and bills which have passed through Committee of the whole house, be excepted from the operation of this order. Provided, that every such notice of oppo-

[1] 80 Com. J. 537; 93 Ib. 204; 97 Ib. 129; 98 Ib. 112; 123 Ib. 148.
[2] 9th March 1854; 109 Com. J. 124.
[3] 98 Com. J. 198; 103 Ib. 551. 755.
[4] 18 Ib. 718.

sition or amendment be signed in the house by a member, and dated, and shall lapse at the end of the week following that in which it was given. Provided also, that this rule shall not apply to the nomination of Select Committees."

It has been decided that this rule does not extend to amendments in committee upon a bill, or upon the report, but solely to amendments upon the order of the day itself. It has further been ruled, that an order of the day, upon which notice of an amendment has been given, cannot be proceeded with, even when the amendment is withdrawn.[1] It has been held that an instruction to the committee on a bill is not to be regarded as an amendment upon the order of the day.[2] The rule does not apply to the discharge of the order of the day for committee on a bill, and the commitment of the bill to a Select Committee, as the bill is not advanced a stage by such a motion;[3] nor, for the same reason, to the commitment of a bill *pro formâ*.[4] Such bills as the East India Loan Bill, in 1873, the Public Loans Remission Bill, and the Metropolitan Board of Works (Money) Bill, in 1881, have been treated as money bills.[5] The committee, or report of Ways and Means, has also been held to be excluded from this rule, as the initial stage of a money bill.[6]

Complicated questions.

If a question be complicated, the house may, if it think fit, order it to be divided, so that each part may be determined separately.[7] A right has been claimed, in both houses, for an individual member to insist upon the division of a complicated question: but it has not been recognised, nor can it be reasonable to allow it, because, 1st, the house might not think the question complicated; and, 2ndly, the member objecting to its complexity may move its separation by amendments. On the 19th February 1770, a resolution, "That it is a rule of

[1] 210 Hans. Deb. 3rd Ser. 1977; 212 Ib. 302.

[2] So ruled (privately) by the Speaker, 5th May 1879.

[3] 270 Hans. Deb. 3rd Ser. 351.

[4] 268 Ib. 116.

[5] 215 Ib. 1109; 21st and 22nd July 1881.

[6] Hans Deb. 25th Feb. 1878.

[7] 2 Com. J. 43; 32 Ib. 710; 33 Ib. 89; 34 Ib. 330; 35 Ib. 217 (a question divided into five). 17 Hans. Parl. Hist. 429; 2 Hatsell, 118.

this house, that a complicated question which prevents any member from giving his free assent or dissent to any part thereof, ought, if required, to be divided," was proposed and negatived. This motion, however, was intended to assert the right of any one member to have the question divided;[1] and immediately afterwards, the very question in dispute was separated, by order of the house.

On the 29th January 1722, a protest was entered on the Journals of the Lords, in which it was alleged "to be contrary to the nature and course of proceedings in Parliament, that a complicated question, consisting of matters of a different consideration, should be put, especially if objected to, that lords may not be deprived of the liberty of giving their judgments on the said different matters, as they think fit."[2]

It is probable that this claim arose out of the ancient custom by which the framing of a question was entrusted to the Speaker, who prepared it during the debate. The member, who had introduced the matter to the notice of the house, would then very naturally have objected to a question which did not express his own opinion only, but included also the opinions of others. At that time, also, the subtle practice of amendments was less perfectly understood. But, as the house can order a question to be divided, it may be moved for that purpose, and it is difficult to state an objection to such a proceeding, although the ordinary practice has been to resort to amendments, instead of attempting the dissection of a question, in another form. When several resolutions are proposed, each is the subject of a separate question.

Question put.

When all preliminary debates and objections to a question are disposed of, the question must next be put, which is done in the following manner. The Speaker, if necessary, takes a written or printed copy of the question, and, rising from his

[1] See 1 Cavendish Deb. 460–475. 2 Woodfall's Junius, 139.

[2] 22 Lords' J. 73. See also 24 Ib. 466, 467. 4 Timberland's Debates of the Lords, 392.

chair,[1] states or reads it to the house, at length, beginning with "The question is, that." This form of putting the question is always observed, and precedes (or is supposed to precede) every vote of the house, however insignificant, except in cases where a vote is a formal direction, in virtue of previous orders.[2]

In the Lords, when the question has been put, the Speaker says, "As many as are of that opinion say 'Content,'" and "As many as are of a contrary opinion say 'Not content;'" and the respective parties exclaim "Content," or "Not content," according to their opinions. In the Commons, the Speaker takes the sense of the house by desiring that "As many as are of that opinion say 'Aye,'" and "As many as are of the contrary opinion say 'No.'" On account of these forms, the two parties are distinguished in the Lords as "contents" and "not contents," and in the Commons as the "ayes" and "noes."[3] When each party have exclaimed according to their opinion, the Speaker endeavours to judge, from the loudness and general character of the opposing exclamations, which party have the majority. As his judgment is not final, he expresses his opinion thus: "I think the ('contents,' or) 'ayes' have it;" or, "I think the ('not contents,' or) 'noes' have it." If the house acquiesce in this decision, the question is said to be "resolved in the affirmative" or

[1] On the 9th April 1866, the Speaker, on returning to the house after an illness, said he should still be obliged to claim some further indulgence; and he hoped he might be permitted to sit while putting the questions. 121 Com. J. 197.

[2] "Order, that nothing pass by order of the house without a question, and that no order be without a question, affirmative and negative." (1614.) 1 Com. J. 464. "Resolved, that when a general vote of the house concurreth in a motion propounded by the Speaker, without any contradiction, there needeth no question." (1621.) Ib. 650.

[3] The form of putting the question, and taking the vote, was very similar in the Roman senate. The consul who presided there, was accustomed to say, "Qui hæc sentitis in hanc partem; qui alia omnia, in eam partem, ite, quâ sentitis."—Plinii Epistolæ, lib. viii. ep. 14. In the Scottish Parliament, the form of putting the question was, "Approve or not approve the article." 3 Lord Macaulay, Hist. 693.

"negative," according to the supposed majority on either side; but if the party thus declared to be the minority dispute the fact, they say "The 'contents' (or 'not contents') the 'ayes' (or 'noes') have it," as the case may be; and the actual numbers must be counted, by means of what is termed a division.[1]

Questions again stated.

The question is stated distinctly by the Speaker: but in case it should not be heard, it will be stated again. On the 15th April 1825, notice was taken that several members had not heard the question put, and the Speaker desired any such members to signify the same; which being done the question was again stated to them, and they declared themselves with the "noes."[2]

Voices on the question.

It must be well understood by members that their opinion is to be collected from their voices in the house, and not merely by a division; and that if their voices and their votes should be at variance, the former will be held more binding than the latter. On the 7th July 1854, on the Middlesex Industrial Schools Bill, notice was taken after the numbers had been reported, that a member had given his voice with the "noes," and had voted with the "ayes"; and the Speaker directed his vote to be recorded with the "noes."[3]

All authorities have agreed that a member giving his voice with the "ayes" (or "noes"), when the Speaker takes the voices, is bound to vote with them. But members, after giving their voices with that party with which they desire to vote and actually divide, have occasionally questioned the Speaker's decision, though given in their favour, in order to force the opposite party to a division. It was for a long time unsettled, whether a member, having given his voice with the "ayes," may yet say "the 'noes' have it," without being obliged to vote with the "noes." On the 29th February 1796, this question was debated in the house, Mr. Pitt maintaining that a member was quite at liberty to

[1] See Chapter XII., on Divisions.
[2] 80 Com. J. 307.
[3] 109 Ib. 373.

force his opponents to a division: and though the Speaker pronounced such conduct to be "unbecoming and contrary to the rules and practice of Parliament," the house arrived at no conclusion upon the subject.[1] But it is obviously for the minority alone, to appeal from the Speaker's decision to the ultimate test of a division. If they are satisfied, the determination of the house is at once arrived at, upon the question, without resorting to a division; and, upon this principle, it has, of late years, been acknowledged as a rule, that a member exclaiming "the 'noes' have it," will be taken to have declared himself with the "noes," without inquiring on which side his voice may previously have been given.

On the report of the Holyrood Park Bill, August 10th 1843, a member called out with the "noes," "the 'noes' have it," and thus forced their party to a division, although he was about to vote with the "ayes" and went out into the lobby with them. On his return, and before the numbers were declared by the tellers, Mr. Brotherton addressed the Speaker, sitting and covered[2] (the doors being closed), and claimed that the member's vote should be reckoned with the "noes." The Speaker put it to the member, whether he had said, "the 'noes' have it;" to which he replied that he had, but without any intention of voting with the "noes." The Speaker, however, would not admit of his excuse, but ordered that his vote should be counted with the "noes," as he had declared himself with them in the house. Again, on the 24th June 1864, notice being taken that a member having given his voice with the "ayes" had voted with the "noes," he was called to the table by Mr. Speaker, and stated that he had given his voice with the "noes," but had called out "the 'ayes' have it," in order to force a division; whereupon Mr. Speaker directed his vote to be recorded with the

[1] 2 Hatsell, 201, *n.* The debate is not to be found in the Parl. Hist.

[2] The committee of ways and means was addressed in this manner, 6th May 1853; and the house on the 20th April 1883. See also *infra*, p. 341, and Chapter XII. (Divisions).

"ayes;"[1] and lastly, on the 4th June 1866, Mr. Speaker condemned this practice of forcing a division as "irregular and unparliamentary."[2] Such an objection should be taken either before the numbers are reported by the tellers, or immediately afterwards; and will not be entertained after the declaration of the numbers from the chair.[3]

A member changing his opinion.

It would seem, however, that by the ancient rules of the house, a member was at liberty to change his opinion upon a question. On the 1st May 1606, "A question moved, whether a man saying 'yea,' may afterwards sit and change his opinion. A precedent remembered in 39 Eliz., of Mr. Morris, attorney of the court of wards, by Mr. Speaker, that changed his opinion. Misliked somewhat, it should be so; yet said that a man might change his opinion."[4] A member who has made a motion, is afterwards entitled to vote against it, provided he gives his voice with the "noes" when the question is put from the chair.[5]

Question put before conclusion of debate.

It has been said that the question is put when the debate is concluded; but on one memorable occasion, the Speaker was constrained, by an unexampled crisis, to put it when some members were still desirous of speaking. On the morning of Wednesday the 2nd February 1881, after a continuous sitting from the previous Monday, the Speaker interposed, and said:—

"The motion for leave to bring in the Protection of Person and Property (Ireland) Bill has now been under discussion for above five days. The present sitting, having commenced on Monday last at four o'clock, has continued until this Wednesday morning, a period of forty-one hours, the house having been occupied with discussions upon repeated dilatory motions for adjournment. However prolonged and tedious these discussions, the motions have been supported by small minorities, in opposition to the general sense of the house.

"A crisis has thus arisen which demands the prompt interposition of the chair, and of the house. The usual rules have proved power-

[1] National Education, Ireland. Votes, p. 595.

[2] 183 Hans. Deb. 3rd Ser. 1919.

[3] Maynooth College Acts Committee, 15th April 1856.

[4] 1 Com. J. 303.

[5] Mr. Beresford Hope (on business of the house), 17th February 1876; 227 Hans. Deb. 3rd Ser. 473.

less to ensure orderly and effective debate. An important measure, recommended in Her Majesty's Speech nearly a month since, and declared to be urgent, in the interests of the State by a decisive majority, is being arrested by the action of an inconsiderable minority, the members of which have resorted to those modes of 'obstruction' which have been recognized by the house as a Parliamentary offence.

"The dignity, the credit, and the authority of this house are seriously threatened, and it is necessary that they should be vindicated. Under the operation of the accustomed rules and methods of procedure, the legislative powers of the house are paralyzed. A new and exceptional course is imperatively demanded; and I am satisfied that I shall best carry out the will of the house, and may rely upon its support, if I decline to call upon any more members to speak, and at once proceed to put the question from the chair. I feel assured that the house will be prepared to exercise all its powers in giving effect to these proceedings.

"Future measures for ensuring orderly debate I must leave to the judgment of the house. But I may add that it will be necessary either for the house itself to assume more effectual control over its debates, or to entrust greater authority to the chair." [1]

He then proceeded to put the question, which being decided in the affirmative, the bill was brought in, and the house at length adjourned. The Speaker's appeal, for a further control of debates, was followed by temporary rules of urgency, and by new rules of procedure, which will be described elsewhere.[2]

Orders and resolutions.

Every question when agreed to, assumes the form either of an order, or a resolution of the house. By its orders, the house directs its committees, its members, its officers, the order of its own proceedings, and the acts of all persons whom they concern: by its resolutions, the house declares its own opinions and purposes.

[1] 136 Com. J. 50; Hans. Deb. 31st January, 1st and 2nd February 1881; Mr. Speaker Brand's Note Book.

[2] Chapter XI. (RULES OF DEBATE).

CHAPTER IX.

AMENDMENTS TO QUESTIONS, AND AMENDMENTS TO PROPOSED AMENDMENTS.

Objects and principle of an amendment.

THE object of an amendment is, generally, to effect such an alteration in a question as will enable certain members to vote in favour of it, who, without such alteration, must either have voted against it, or have abstained from voting. Without the power of amending a question, an assembly would have no means of expressing their opinions with consistency: they would either be obliged to affirm a whole question, to parts of which they entertained objections, or to negative a whole question, to parts of which they assented. In both cases a contradiction would ensue, if they afterwards expressed their true judgment in another form. In the first case supposed, they must deny what they had before affirmed; and in the second, they must affirm what they had before denied. Even if the last decision were binding, both opinions would have been voted, and probably entered in their minutes, and the contradiction would be manifest.

Sometimes the object of an amendment is to present to the house an alternative proposition, either wholly or partially opposed to the original question; and the form of an amendment is here convenient, as affording the house an opportunity of deciding, in one proceeding, upon the two propositions.[1]

The confusion which must arise from any irregularity in the mode of putting amendments, is often exemplified at public meetings, where fixed principles and rules are not observed; and it would be well for persons in the habit of presiding at meetings of any description, to make themselves familiar with the rules of Parliament, in regard to questions

[1] See also *supra*, p. 305.

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and amendments;[1] which have been tested by long experience, and are found as simple and efficient in practice as they are logical in principle.

Various modes of amendment.

An amendment may be made to a question, 1, by leaving out certain words; 2, by leaving out certain words, in order to insert or add others; 3, by inserting or adding certain words. The time for moving an amendment is after a question has been proposed by the Speaker, and before it has been put. It is customary, and more convenient, to give notice of an amendment; but it is competent for any member to propose an amendment without notice; and when notice has been given of an amendment, it can only be moved by the member in whose name it stands upon the notice paper.[2] But another member, who has given notice of an amendment, is not entitled to precedence on that account:[3] as, according to the rules of debate, the member who first rises, and is called by the Speaker, being in possession of the house, is entitled to conclude with any motion, which may properly be made at that time. Nor is a member who has given notice of an amendment entitled to be heard before a member who rises to speak to the question.[4] The order and form in which the points arising out of amendments are determined, are as follows :—

Amendments without notice.

To leave out words.

1. When the proposed amendment is, to leave out certain words, the Speaker says: "The original question was this," stating the question at length; "Since which, an amendment has been proposed to leave out the words," which are proposed to be omitted. He then puts the question, "That the words proposed to be left out stand part of the question." If that question be resolved in the affirmative, it shows that the house prefer the original question to the amendment, and the question, as first proposed, is put by the Speaker.

[1] Mr. Palgrave has done good service in this respect, by the publication of "The Chairman's Handbook."

[2] 257 Hans. Deb. 1321. 265 Ib. 169.

[3] See 84 Hans. Deb. 3rd Ser. 641, 5th March 1846 (Andover Union), where it was so ruled by Mr. Speaker.

[4] Mr. Speaker Brand's Note Book, 13th May 1879.

If, however, the question, "That the words stand part of the question," be negatived, the question is put, with the omission of those words; unless another amendment be then moved, for the insertion or addition of other words.

To leave out words, and to insert or add others.

2. When the proposed amendment is to leave out certain words,[1] in order to insert or add others, the proceeding commences in the same manner as the last. If the house resolve "That the words proposed to be left out stand part of the question," the original question is put: but if they resolve that such words shall not stand part of the question, by negativing that proposition when put, the next question proposed is, that the words proposed to be substituted, be inserted or added instead thereof. This latter question being resolved in the affirmative, the main question, so amended, is put.

Where the question and amendment are both objected to.

It is sometimes erroneously supposed that a member who is adverse both to the original question, and to the proposed amendment, would express an opinion favourable to the question, by voting "That the words proposed to be left out stand part of the question." By such a vote, however, he merely declares his opinion to be adverse to the amendment. After the amendment has been disposed of, the question itself remains to be put, upon which each member may declare himself as distinctly as if no amendment whatever had been proposed. If, however, he be equally opposed to the question and to the amendment, it is quite competent for him to vote with the "noes" on both.

Questions mutilated by amendments.

On the 19th June 1822, the house having struck out all the words of a question after "That" relative to tithes in Ireland, an amendment to add other words, was superseded by the house passing to the other orders of the day; and the original question was thus left, reduced to the initial word "that."[2] Again, on the 8th December 1857, a majority of the house being adverse to a motion relating to joint-stock

[1] It is not competent to move to leave out all the words of a question. The initial word "that" must, at least, be retained.

[2] 77 Com. J. 356.

banks, and also to a proposed amendment, the original question was ultimately reduced to the word "that;" when, no other amendment being proposed, the Speaker called upon the member whose notice stood next upon the paper.[1] Similar proceedings occurred on the 4th April 1876, upon a motion relating to the blending of whiskey;[2] on the 13th February 1877, upon a motion relating to East India finance;[3] on the 24th February 1880, upon a motion relating to freedom from arrest;[4] on the 2nd March, in the same year, upon a motion relating to the game laws;[5] on the 27th March 1881, on a motion relating to the decimal coinage;[6] and again, on the 16th February 1883, in regard to an amendment to the Address, when nothing but the word "But" was left, and the discussion of the Address was proceeded with.

On the 21st June 1870, a motion being made that it is undesirable that opposed business should be proceeded with after 12 o'clock, an amendment was proposed to leave out "12" and insert "one." Upon division, the house resolved first, that "12" should not stand part of the question; and secondly, that "one" should not be inserted. The question thus stood with a blank, which no one proposed to fill up with any other words: when the house was happily relieved from its embarrassment by the withdrawal of the original motion.[7] And again, on the 2nd July 1872, upon all the words of a motion relating to the established church after "that" having been left out, and the question for adding the words of the proposed amendment being negatived, the main question, as amended, was also put and negatived.[8]

To insert or add words.

3. In the case of an amendment to insert or add words, the proceeding is more simple. The question is merely put, that the proposed words "be there inserted" or "added."

[1] 113 Com. J. 10.
[2] 131 Ib. 139.
[3] 132 Ib. 40.
[4] 135 Ib. 60.
[5] Ib. 74.
[6] 136 Ib. 163.
[7] 125 Ib. 270.
[8] 127 Ib. 314.

If it be carried, the words are inserted or added accordingly, and the main question, so amended, is put: but if negatived, the question is put as it originally stood,[1] unless it be afterwards proposed to insert or add other words. Sometimes an amendment has been moved to an amendment to a proposed amendment.[2]

Restrictions in proposing amendments.

Several amendments may be moved to the same question, but subject to these restrictions: 1. No amendment can be made in the first part of a question, after the latter part has been amended, or has been proposed to be amended, if a question has been proposed from the chair upon such amendment: but if an amendment to a question be *withdrawn*, by leave of the house, the fact of that amendment having been proposed will not preclude the proposal of another amendment, affecting an earlier part of the question, so long as it does not extend further back than the last words upon which the house have already expressed an opinion: for the withdrawal of the first amendment leaves the question in precisely the same condition as if no amendment had been proposed.[3] Each separate amendment should be proposed in the order in which, if agreed to, it would stand in the amended question;[4] and should a member, being in possession of the house, move an amendment, another member, before the question upon such amendment has been proposed from the chair, may intimate his intention of moving an amendment to an earlier part of the question, in which case the latter amendment will be allowed precedence.[5] But if the question has been already proposed from the chair upon the first amendment, the latter cannot be moved, unless the first be, by leave of the house, withdrawn. 2. When the house have agreed that certain words shall stand part of a question, it is irregular to propose any amendment to those words, as the decision

[1] 113 Com. J. 201.

[2] Business of the House, 22nd Nov. 1882; 137 Ib. 514.

[3] So ruled (privately) by Mr. Speaker, 19th February 1845.

[4] 2 Hatsell, 123.

[5] See Debate on Address, 1st Feb. 1849. 102 Hans. Deb. 3rd Ser. 117; Mr. Disraeli and Mr. Grattan.

of the house has already been pronounced in their favour:[1] but this rule does not exclude an addition to the words, if proposed at the proper time.[2] In the case of a second reading or other stage of a bill, however, it is not allowable to add words to the question, after the house has decided that words proposed to be left out should stand part of that question. Every stage of a bill, being founded upon a previous order of the house, is passed by means of a recognised formula, and may be postponed or arrested by acknowledged forms of amendment: but when any such amendment has been negatived, no other amendment, by way of addition to the question, can be proposed, which is not, in some degree, inconsistent with the previous determination of the house; and it has, therefore, never been permitted.[3] Nor can an amendment be made, by the addition of words to the question, for reading a bill a second time.[4] The same rule applies to amendments on going into committee of supply. 3. In the same manner, when the house have agreed to add or insert words in a question, their decision may not be disturbed by any amendment of those words: but here, again, other words may be added. Such words, however, may not be to the same effect as those omitted by the amendment.[5]

But when a member desires to move an amendment to a part of the question proposed to be omitted by another

[1] See Debate on Ecclesiastical Titles Bill, 12th May 1851.

[2] 8th June 1810 (Address concerning the Lord Lieutenant of Ireland), 65 Com. J. 480.

[3] Such an amendment having been suggested on the 28th May 1866, on going into committee on the Representation of the People Bill, Mr. Speaker (privately) ruled that it would be irregular; and after a careful search, no such case could be found in the Journals. On the 4th June, Mr. Speaker also stated the rule from the chair; 183 Hans. Deb. 3rd Ser. 1918; and again, 186 Ib. 1285. Mr. Speaker Denison's Note-Book. See also 240 Hans. Deb. 1602.

[4] On the 21st July 1871, the Duke of Richmond gave notice of a resolution, by way of addition to the question, for the second reading of the Army Regulation Bill: but on the 27th, on the representation of Viscount Eversley, this notice was amended: and on the 31st the resolution was moved as an amendment to the question, in the usual form.

[5] Elementary Education, 5th March 1872. (Mr. Mundella's amendment not moved.)

amendment, or to alter words proposed to be inserted, it is sometimes arranged that only the first part of the original amendment shall be formally proposed, in the first instance, so as not to preclude the consideration of the second amendment. This course is not often resorted to in the house itself, except upon the consideration of bills, as amended, or addresses to the Crown, or extended resolutions:[1] but is continually adopted in the proceedings of committees of the whole house.[2] The convenience of the house may also be consulted, in some cases, by the withdrawal of an amendment, and the substitution of another, the same in substance as the first, but omitting certain words to which objections are entertained.[3] An amendment may, at any time, be withdrawn, in the same manner and subject to the same conditions as a motion. On the 2nd May 1882, an amendment was, by leave of the house, withdrawn, after the words of the original motion had been negatived, and the question had been proposed for adding the words of the amendment.[4] An amendment cannot be withdrawn in the absence of the member who moved it.[5]

Amendments to proposed amendments.

Another proceeding may also be resorted to, by which an amendment is intercepted, as it were, before it is offered to the house, in its original form, by moving to amend the first proposed amendment. In such cases the questions put by the Speaker deal with the first amendment as if it were a distinct question, and with the second as if it were an ordinary amendment. The original question is, indeed, for a time, laid aside; and the amendment becomes, as it were, a substantive question itself. Unless this were done, there would be three points under consideration at once, viz., the question, the proposed amendment, and the amendment of that amend-

[1] Resolutions relating to public business, 26th Feb. 1880; 250 Hans. Deb. 1450; and in 1882; 274 Ib. 46. 247. 252. Mr. Speaker Brand's Note Book, 4th April 1879.

[2] See Amendments in Committee on the Government of India, 7th and 14th June 1858, &c.

[3] See Mr. Duncombe's amendment (Education), 22nd April 1847; 91 Hans. Deb. 3rd Ser. 1236.

[4] Wigan writ; 137 Com. J. 172.

[5] 151 Ib. 952.

ment: but when the question for adopting the words of an amendment is put forward distinctly, and apart from the original question, no confusion arises from moving amendments to it, before its ultimate adoption is proposed.[1]

[1] It appears, from a curious letter of the younger Pliny (Plinii Epistolæ, lib. viii. ep. 14), that the Roman senate were perplexed in the mode of disentangling a question that involved three different propositions. It was doubtful whether the consul, Afranius Dexter, had died by his own hand, or by that of a domestic; and if by the latter, whether at his own request, or criminally; and the senate had to decide on the fate of his freedmen. One senator proposed that the freedmen ought not to be punished at all; another, that they should be banished; and a third, that they should suffer death. As these judgments differed so much, it was urged that they must be put to the question distinctly, and that those who were in favour of each of the three opinions should sit separately, in order to prevent two parties, each differing with the other, from joining against the third. On the other hand, it was contended that those who would put to death, and those who would banish, ought jointly to be compared with the number who voted for acquittal, and afterwards among themselves. The first opinion prevailed, and it was agreed, that each question should be put separately. It happened, however, that the senator who had proposed death, at last joined the party in favour of banishment, in order to prevent the acquittal of the freedmen, which would have been the result of separating the senate into three distinct parties. The mode of proceeding adopted by the senate was clearly inconsistent with a determination by the majority of an assembly; being calculated to leave the decision to a minority of the members then present, if the majority were not agreed. The only correct mode of ascertaining the will of a majority, is to put but one question at a time, and to have that resolved in the affirmative or negative by the whole body. The combinations of different parties against a third cannot be avoided (which after all was proved in the senate); and the only method of obtaining the ultimate judgment of a majority, and reconciling different opinions, is by amending the proposed question until a majority of all the parties agree to affirm or deny it, as it is ultimately put to the vote. I was indebted to the late Mr. Rickman for a reference to Pliny's letter, accompanied by a very animated translation, which I regret is too long to be inserted.

The following is another example of the mode of determining a question without amendment, which involved a distinct contradiction. During the rivalry between Pompey and Cæsar, it was proposed in the senate, either that they should both give up or both retain their troops. It is stated by Plutarch, that "Curio, with the assistance of Antonius and Piso, prevailed so far as to have it put to the regular vote. Accordingly he proposed that those senators should move off to one side who were in favour of Cæsar alone laying down his arms and Pompeius remaining in command; and the majority went over to that side. Again, upon his proposing that all who were of opinion

Where the original amendment is either simply to insert, add, or omit words, an amendment may at once be proposed to it, without reference to the question itself, which will be dealt with when the amendment has been disposed of.

Amendments to proposed amendments, leaving out words.

The most difficult form, perhaps, is when the amendment first proposed is to leave out certain words of the original question; and an amendment is proposed to such proposed amendment, by leaving thereout some of the words proposed to be omitted, and thus, in effect, restoring them to the original question. In such a case a question is first put, that the words proposed to be omitted, stand part of the proposed amendment. If that question be affirmed, the question is then put, that all the words proposed to be omitted, by the first amendment, stand part of the original question. But if it be negatived, a question is put, that the words comprised in the amendment, so amended, stand part of such original question.[1]

Leaving out words and adding others.

But where the original amendment is to leave out certain words, in order to insert or add other words, no amendment can be moved to the words proposed to be substituted, until the house have resolved that the words proposed to be left out, shall not stand part of the question. But so soon as the question is proposed for inserting or adding the words of the amendment, an amendment may be moved thereto.

A short example will make this latter proceeding more intelligible. To avoid a difficult illustration, (of which there are many in the Journals,[2]) let the simple question be, "That this bill be *now* read a second time;" to which an amendment has been proposed, by leaving out the word "now," and adding "upon this day six months;" and let the question that the word "now" stand part of the question, be negatived,

that both should lay down their arms, and that neither should hold a command, only twenty-two were in favour of Pompeius, and all the rest were on the side of Curio."—Plutarch, Life of Pompey, by Professor Long, p. 80.

[1] 27 Com. J. 298; 39 Ib. 842; 64 Ib. 131; 134 Ib. 136.

[2] See Com. Gen. Journ. Indexes, 1774–1865, tit. *Amendments*. 108 Com. J. 516.

and the question for adding "upon this day *six months*," be proposed. An amendment may then be proposed to such proposed amendment, by leaving out "six months," and adding "fortnight," instead thereof. The question will then be put, "That the words 'six months' stand part of the said proposed amendment." If that be affirmed, the question for adding "this day six months," is put, and if carried, the main question, so amended, is put, viz. "That this bill be read a second time this day six months." But if it be resolved, that "six months" shall not stand part of the proposed amendment, a question is put that "fortnight" be added; and, if that be agreed to, the first amendment, so amended, is put, viz. that the words "this day fortnight" be added to the original question. That being agreed to, the main question, so amended, is put, viz. "That this bill be read a second time this day fortnight."[1] Several amendments may be moved, in succession, to a proposed amendment—subject to the same rules as amendments to questions.[2] An amendment to a proposed amendment cannot be moved, if it proposes to leave out all the words of such proposed amendment: but in such a case the first amendment must be negatived, before the second can be offered.[3]

Amendments to be relevant.

An amendment should be relevant to the question to which it is proposed to be made.[4] On the 28th February 1882, on a motion for declaring Michael Davitt incapable of being elected or returned as a member, an amendment was about to be proposed for an address to the Crown for a free pardon; but the Speaker interposed and pointed out that such an amendment was inadmissible, as it had no relation to the question before the house, but should form the subject of a distinct motion, after notice given in the usual manner. But

[1] Dublin Waterworks Bill, 27th February 1849.

[2] 6th March 1840 (Supply), 101 Com. J. 865.

[3] Education in rural districts (Mr. Pell and Mr. Wilbraham Egerton), 2nd March 1875; 130 Com. J. 70.

[4] 266 Hans. Deb. 3rd Ser. 1846; 11th May 1882; 269 Ib. 461; 3rd July 1882; 271 Ib. 1290; but see also 23 Ib. 785; 38 Ib. 174.

on a question re-affirming a resolution restraining Mr. Bradlaugh from taking the oath, an amendment in favour of an amendment of the Oaths Acts was held to be relevant and admissible.[1] And in the case of an order of the day, the relevancy of amendments is specially enforced, except on going into Committee of Supply or Ways and Means.[2]

And must be intelligible and consistent.

Every amendment proposed to be made, either to a question or to a proposed amendment, should be so framed that, if agreed to by the house, the question, or amendment as amended, would be intelligible and consistent with itself.

Amendments moved before previous question.

It may sometimes happen, that an amendment clashes with the proposal of the previous question; in which case the priority of either would depend upon the period at which the conflict arises. If the members who are about to offer these conflicting motions could previously arrange, with each other, the intended order of proceeding, it would generally be most convenient to move the amendment first; because it is manifestly reasonable to consider, in the first place, what the question shall be, if put at all; and, secondly, whether the question shall be put or not. Unless this course were adopted, an amendment, which might alter the question so as to remove objections to its being put, could not be proposed; for if the previous question were resolved in the affirmative, it must be put immediately by the Speaker, as it stands; and if in the negative the question would no longer be open to consideration. But if the amendment has been first proposed, it must be withdrawn or otherwise disposed of, before a motion for the previous question can be admitted.[3]

After previous question proposed.

If, on the other hand, the previous question has been first proposed by the Speaker, no amendment can be received until

[1] 267 Hans. Deb. 3rd Ser. 1882.

[2] See Chapter XXI. (Supply and Ways and Means).

[3] On the 1st April 1862, after an amendment had been proposed but not made to a question relative to the Civil Service, the previous question was moved, and passed in the negative; 117 Com. J. 129. And the like proceeding occurred on the 9th June 1863 (Uniformity Act); 118 Ib. 269. See also proceedings relative to Kagosima, 119 Ib. 45; Denmark, Ib. 179; 174 Hans. Deb. 3rd Ser. 1376; Malt Duty, 120 Com. J. 117; 212 Hans. Deb. 926.

the previous question is withdrawn.[1] If the members who moved and seconded the previous question agree, by leave of the house, to withdraw it, the amendment may be proposed, but not otherwise.[2] If they refuse to withdraw it, the previous question must be put and determined. If, however, the house should generally concur in the amendments which were precluded from being put, they would permit a new and distinct question to be afterwards proposed, embodying the spirit of those amendments, upon which a separate vote might be taken.[3]

In the Commons, every amendment must be proposed and seconded in the same manner as an original motion; and if no seconder can be found, the amendment is not proposed by the Speaker, but drops, as a matter of course,[4] and no entry of it appears in the Votes.

[1] Lord Lieutenant of Ireland, 25th Mar. 1858; 149 Hans. Deb. 3rd Ser. 712.

[2] 36 Com. J. 825.

[3] 2 Hatsell, 121.

[4] 177 Hans. Deb. 3rd Ser. 1528.

CHAPTER X.

THE SAME QUESTION OR BILL MAY NOT BE TWICE OFFERED IN A SESSION.

Object of the rule.

It is a rule, in both houses, not to permit any question or bill to be offered, which is substantially the same as one on which their judgment has already been expressed, in the current session.[1] This is necessary in order to avoid contradictory decisions, to prevent surprises, and to afford proper opportunities for determining the several questions as they arise. If the same question could be proposed again and again, a session would have no end, or only one question could be determined; and it would be resolved first in the affirmative, and then in the negative, according to the accidents to which all voting is liable.

Exceptions.

But, however wise the general principle of this rule may be, if it were too strictly applied, the discretion of Parliament would be confined, and its votes be subject to irrevocable error. A resolution may therefore be rescinded,[2] and an order of the house discharged, notwithstanding a rule *urged* (April 2nd 1604), "That a question being once made, and carried in the affirmative or negative, cannot be questioned again, but must stand as a judgment of the house."[3] Technically, indeed, the rescinding of a vote is the matter of a new question; the form being to read the resolution of the house, and to move that it be rescinded; and thus the same question which had been resolved in the affirmative is not again offered, although its effect is annulled. The same result is produced when a resolution has been agreed to, and

Votes rescinded.

[1] 1 Com. J. 306. 434.

[2] Baron Smith; 89 Com. J. 59. Education (Inspectors' Reports) 1864, 119 Ib. 463.

[3] 1 Ib. 162.

a motion for bringing in a bill thereupon is afterwards negatived, as in the proposed reduction of the malt duty in 1833.[1]

To rescind a negative vote, except in the different stages of bills, is a proceeding of greater difficulty, because the same question would have to be offered again. The only means, therefore, by which a negative vote can be revoked, is by proposing another question, similar in its general purport to that which had been rejected, but with sufficient variance to constitute a new question; and the house would determine whether it were substantially the same question or not.

There is also a difficulty in discharging an order for an address to the Crown, after it has been presented to her Majesty; and thus, in 1850, an address having been agreed to for discontinuing the collection and delivery of letters on Sunday, and for inquiry into the subject, another address was agreed to, some time afterwards, for inquiring whether Sunday labour might not be reduced in the Post Office, without completely putting an end to the collection and delivery of letters.[2] Again, in 1856, when an address had been voted on the subject of national education in Ireland,[3] in which the majority of the house did not concur, instead of discharging the order for the address, a resolution was agreed to, for the purpose of qualifying the opinions embodied in the address;[4] and her Majesty's answer was framed in the spirit of the resolution, as well as of the address.[5]

Sometimes the house may not be prepared to rescind a resolution, but may be willing to modify its judgment. In such cases, the former resolution is read, and another resolution relating to the same subject is agreed to. Thus, a resolution having been agreed to on the 16th July 1877, condemning a recent appointment of controller of the stationery office, as calculated to diminish the usefulness of select com-

[1] 88 Com. J. 317. 329.
[2] 105 Ib. 383. 509.
[3] 111 Ib. 272.
[4] Ib. 289.
[5] 111 Ib. 298. See also 111 Hans. Deb. 3rd Ser. 1404.

mittees, and to discourage the zeal of officials, the house resolved on the 23rd July—

"That this house, while most anxious to maintain the usefulness and influence of its select committees, and to encourage the interest and zeal of officials employed in the public departments of the state, after hearing the further explanations concerning the recent appointment of the controller of her Majesty's stationery office, withdraws the censure conveyed in the said resolution."[1]

Evasions of the rule.

A mere alteration of the words of a question without any substantial change in its object, will not be sufficient to evade this rule. On the 7th July 1840, Mr. Speaker called attention to a motion for a bill to relieve dissenters from the payment of church rates, before he proposed the question from the chair.[2] Its form and words were different from those of a previous motion, but its object was substantially the same; and the house agreed that it was irregular, and ought not to be proposed from the chair. Again, on the 15th May 1860, the order for the second reading of the Charity Trustees Bill was withdrawn, as it was discovered to be substantially the same as the Endowed Schools Bill, which the house had already put off for six months.[3] So, also, on the 17th May 1870, a motion for an address in favour of emigration was not allowed to be made, being substantially the same as a resolution which had been negatived in the same session.[4] On the 1st July 1880, objection was taken that a general resolution allowing all members to affirm, subject to any liability by statute, was substantially the same as a previous resolution forbidding Mr. Bradlaugh to take the oath or affirmation, was overruled.[5] On the 9th May 1882, it was ruled by Mr. Speaker that a motion affirming the necessity of legislation to enable members duly elected to take their seats, was inadmissible, as an amendment to the same effect, but in different words, had been negatived on the 7th

[1] 132 Com. J. 345. 367.

[2] 95 Ib. 495; Mirror of Parl. 1840, p. 4387.

[3] 115 Com. J. 249; Mr. Speaker Denison's Note-Book.

[4] 201 Hans. Deb. 3rd Ser. 824.

[5] 253 Ib. 1261.

March. But when a motion for leave to bring in a bill has been rejected, it is competent to move for a committee of the whole house to consider the laws relating to the subject to which that bill referred; and this expedient has been used to evade the orders of the house.

It is also possible, in other ways, so far to vary the character of a motion, as to withdraw it from the operation of the rule.[1] Thus, in the session of 1845, no less than five distinct motions were made upon the subject of opening letters at the Post-office, under warrants from the secretary of state. They all varied in form and matter, so far as to place them beyond the restriction: but in purpose they were the same, and the debates raised upon them embraced the same matters.[2] But the rule cannot be evaded by renewing, in the form of an amendment, a motion which has been already disposed of. On the 18th July 1844, an amendment was proposed to a question, by leaving out all the words after "that," in order to add, "Thomas Slingsby Duncombe, esq., be added to the committee of secrecy on the Post-office:" but Mr. Speaker stated, that on the 2nd July, a motion had been made, "that Mr. Duncombe be one other member of the said committee;" that the question had been negatived; "and that he considered it was contrary to the usage and practice of the house that a question which had passed in the negative should be again proposed in the same session." The amendment was consequently withdrawn.[3] On the 19th February 1873, an amendment was proposed to a question relating to the sittings of the committee of supply on Mondays, to leave out from "that" to the end of the question, in order to add "a select committee be appointed to consider the best means of facilitating the despatch of public business." The house, upon a division, determined

[1] See, for example, General Conway's motions on the American war, 22nd and 27th Feb. 1782; 38 Com. J. 814. 861. Proceedings upon the Malt duty in 1833; 88 Ib. 195. 317; and upon the Sugar duties in 1845; 100 Ib. 59. 69. 81.

[2] 100 Com. J. 42. 54. 185. 199. 214.

[3] 76 Hans. Deb. 3rd Scr. 1021.

that the words proposed to be left out should stand part of the question, and the amendment was consequently lost. On the following day, upon a motion that on Tuesdays the house should meet at 2 p.m., and rise at 7 p.m., a member rose to move an amendment in nearly the same terms as that proposed on the former day. But the Speaker interposed, and said: "The house, last night, on the amendment of the hon. member for Essex, refused to entertain the proposal that the mode of conducting the business of the house should be referred to a select committee, and it is therefore out of order to propose now, by another amendment, that such a course should be taken."[1]

On the 9th May 1870, it was ruled, that when an order for the appointment of a select committee had been discharged, and another order substituted, for the express purpose of omitting certain words in the original order of reference, an instruction to restore those words could not be entertained.[2]

Motions withdrawn may be repeated.

The rule, however, does not apply to cases in which a motion has been by leave of the house withdrawn; or has not been seconded; for such a motion has not been submitted to the judgment of the house, and may, therefore, be repeated.[3]

And motions superseded.

On the 7th December 1857, a resolution was proposed for extending limited liability to joint-stock banks, to which an amendment was proposed affirming the same principle in a modified form. The house refused to permit either of these propositions to form part of the question, which was, consequently, reduced to the single word "that." On the 11th February following, a bill to the same effect was brought in without objection, the house having pronounced its judgment upon a question not substantially the same.[4] So, again, on the 31st March 1859, an amendment was proposed, but not

[1] 214 Hans. Deb. 3rd Ser. 287; Mr. Speaker Brand's Note-Book.

[2] Conventual and Monastic Institutions (Mr. Whalley).

[3] See motion on Railway Bills withdrawn 16th, and renewed 23rd May 1845; 80 Hans. Deb. 3rd Ser. 432. 798.

[4] See also proceedings on Negro Apprenticeship, 1838; 93 Com. J. 418. 541.

made, to a proposed amendment on the second reading of the Representation of the People Bill, expressing an opinion in favour of the ballot: but this was held not to preclude a motion, on a later day, for bringing in a bill for the taking of votes by way of ballot.[1]

On the 5th March 1872, a resolution was moved impugning the general operation of the Elementary Education Act, 1870, and enumerating several points in which it failed, including the payment of school fees to denominational schools. In opposition to it, an amendment was carried, affirming that it was too soon to review the provisions of the Act. On the 23rd April, Mr. Candlish brought forward a motion for leave to bring in a bill to repeal the 25th clause of the Education Act, which authorised the payment of school fees to denominational schools. Exception was taken to this motion, on the ground that substantially it had been embraced in the resolution of the 5th March, and was excluded from consideration by the amendment. But it was held that a resolution in terms so general could not prevent a member from moving for leave to bring in a bill to repeal a single clause of the Act. Moreover a motion for leave to bring in this bill differed essentially from a resolution condemning, in general terms, the operation of the Act. On the 1st May 1877, upon the nomination of the select committee on the Cattle Plague, an amendment to leave out the name of Colonel Kingscote, in order to insert the name of Mr. Biggar, having been negatived, the Speaker ruled that a separate motion might nevertheless be made at a later period, that Mr. Biggar be another member of the committee. From these various illustrations it will be seen that the rule has been strictly, but equitably applied, in restriction of repeated motions or amendments, relating to the same subject-matter.

It will now be necessary to anticipate, in some measure, the proceedings upon bills, which are reserved for future

[1] 114 Com. J. 145. 170.

explanation:[1] but it is desirable to understand, at one view, the precise effect of a decision or vote, whatever may be the nature of the question.

Rule as applied to bills.

In passing bills, a greater freedom is admitted in proposing questions, as the object of different stages is to afford the opportunity of reconsideration; and an entire bill may be regarded as one question, which is not decided until it has passed. Upon this principle it is laid down by Hatsell, and is constantly exemplified, "that in every stage of a bill, every part of the bill is open to amendment, either for insertion or omission, whether the same amendment has been, in a former stage, accepted or rejected."[2] The same clauses or amendments may be decided in one manner by the committee, in a second by the house on the report, and, formerly, might have been dealt with again on the third reading; and yet the inconsistency of the several decisions will not be manifest when the bill has passed.

On the 8th August 1836, a clause was, after divisions, added on the report of the Pensions Duties Bill, to exempt the pension of the Duke of Marlborough from the provisions of that bill.[3] On the third reading an amendment was proposed, by leaving out this clause, and the question that it should stand part of the bill was, on division, passed in the negative.[4] In 1864, in committee on the Poisoned Flesh Prohibition Bill, a clause was added, providing that the bill should not extend to Ireland. This clause was left out on the consideration of the bill, as amended, and lastly, on the third reading, the bill was recommitted, when a proviso was introduced imposing restrictions upon the operation of the

[1] Chapter XVIII.

[2] 2 Hatsell, 135.

[3] 91 Com. J. 762.

[4] 91 Com. J. 817. In 1844, an amendment of Lord Ashley's (for ten hours' labour) having been carried against the Government in the Factories Bill (which limited the hours of labour to twelve), the Government withdrew the bill, and brought in another to the same effect, which was ultimately carried; and thus the decision of the house, upon Lord Ashley's amendment, was virtually reversed. 3 Lord Dalling, Life of Lord Palmerston, 136, *n.*

bill in Ireland.[1] But in committee on a bill, a new clause or amendment will not be allowed, in contravention of a previous decision of the committee, unless there be some substantial variation in its purport.[2]

Bills once passed or rejected.

When bills have ultimately passed, or have been rejected, the rules of both houses are positive, that they shall not be introduced again: but the practice is not strictly in accordance with them. The principle is thus stated by the Lords, 17th May 1606;[3]

"That when a bill hath been brought into the house, and rejected, another bill of the same argument and matter may not be renewed and begun again in the same house in the same session where the former bill was begun; but if a bill begun in one of the houses, and there allowed and passed, be disliked and refused in the other, a new bill of the same matter may be drawn and begun again in that house whereunto it was sent; and if, a bill being begun in either of the houses, and committed, it be thought by the committees that the matter may better proceed by a new bill, it is likewise holden agreeable to order in such case, to draw a new bill, and to bring it into the house."

It was also declared, in a protest, signed by seven lords, 23rd February 1691, in reference to the Poll Bill, in which a proviso contained the substance of a bill which had dropped in the same session; "that a bill having been dropped, from a disagreement between the two houses, ought not, by the known and constant methods of proceedings, to be brought in again in the same session."[4] The Lords, nevertheless, agreed to that bill, but with a special entry, that "to prevent any ill consequences from such a precedent for the future, they have thought fit to declare solemnly, and to enter upon their books, for a record to all posterity, that they will not

[1] 119 Com. J. 425. 436, &c.; 176 Hans. Deb. 1611; Mr. Speaker Denison's Note-Book.

[2] Poor Relief (Ireland) Bill, 29th May 1862. Representation of the People Bill, 17th June and 1st July 1867 (amendments of Mr. Laing and Mr. Horsfall). Parliamentary and Municipal Elections Bill, 2nd May 1872; amendment of Mr. Samuelson, for distinguishing candidates by colours. 211 Hans. Deb. 3rd Ser. 137.

[3] 2 Lords' J. 435.

[4] 15 Ib. 90.

hereafter admit, upon any occasion whatsoever, of a proceeding so contrary to the rules and methods of Parliament."[1]

In the Commons it was agreed for a rule, 1st June 1610, that "no bill of the same substance be brought in the same session.[2] But a second bill has been ordered, with a special entry of the reasons which induced the house to depart from the usage of Parliament.[3] And when part of a bill has been omitted by the Lords, and the Commons have agreed to such amendment, the part so omitted has been renewed, in the same session, in the form of a separate bill.[4]

Lords' Journals inspected.

A common practice, however, has since grown up, with the sanction of both houses, by which these rules are partially disregarded. When the Lords, out of regard for the privileges of the Commons, defer the consideration of the amendments made by the committee on a bill, received from the Commons, for a period beyond the probable duration of the session, it is usual, if such amendments be otherwise acceptable, for the Commons to appoint a committee to inspect the Lords' Journals; and, on receiving their report, which explains the position of the bill in the Lords, to order another bill to be brought in. This bill often has precisely the same title, but its provisions are so far altered as to conform to the amendments made in the Lords. With these alterations it is returned to the Lords, received by them without any objection, and passed as if it were an original bill. Such a bill is not identically the same as that which preceded it: but it is impossible to deny that it is "of the same argument and matter," and "of the same substance." This proceeding is very frequently resorted to, when the Lords' committee have inserted clauses imposing rates or tolls, or have otherwise amended a bill involving charges upon the people.[5] The House of Lords cannot agree to such clauses or amendments,

[1] 15 Lords' J. 90.

[2] 1 Com. J. 434. See also 158 Hans. Deb. 3rd Ser. 1348.

[3] 62 Com. J. 61.

[4] Drainage (Ireland) Bill; and Drainage and Improvement of Land (Ireland) Bill, 1863.

[5] See further Chapter XXI.

without infringing upon the privileges of the Commons, and the bill is therefore dropped: but the Commons, by bringing in another bill, and adopting the amendments to which, in themselves, they are willing to agree, avoid any clashing of privileges: and the bill is ultimately agreed to by both houses.

Bills laid aside.

A proceeding somewhat similar may arise, when a bill is returned from the Lords to the Commons, with amendments which the latter cannot, consistently with their own privileges, entertain. In that case, the proper course, if the Commons be willing to adopt the amendments, is to order the bill to be laid aside, and another to be brought in.[1]

A third proceeding resembles the two last in principle, but differs from both in form. When the Lords pass a bill and send it down to the Commons, with clauses that trench upon the privileges of the latter, it is usual for the Commons to lay the bill aside, and to order another, precisely similar, to be brought in, which, having passed through all its stages, they send up to the Lords exactly in the same manner as if the bill had originated in the Commons.

Lords search Commons' votes.

If a bill has been postponed or laid aside in the Commons, the Lords sometimes appoint a committee to search the Votes and Proceedings of the Commons,[2] and may, if they think fit, introduce another bill, and send it to the Commons.

Prorogation to renew bills.

But in all the preceding cases, the disagreement of the two houses is only partial and formal, and there is no difference in regard to the entire bill. If the second or third reading of a bill sent from one house to the other be deferred for three or six months, or if it be rejected, there is no regular way of reviving it in the same session; and so imperative has that regulation been esteemed, that in 1707, Parliament was prorogued for a week, in order to admit the revival of a

[1] 91 Com. J. 777. 810; 100 Ib. 664; 103 Ib. 888. Deodands Abolition bill, 1845. Revenue Charges bill, 1854. Reformatory and Industrial Schools bill, 1872.

[2] 75 Lords' J. 590; 77 Ib. 505. See also *supra*, p. 261.

bill which had been rejected by the Lords.[1] In 1831, Parliament was prorogued from the 20th October to the 6th December, in order to bring in the third Reform Bill.[2]

Amending Acts of the same session.

The rule has been construed with equal strictness in preventing the introduction of a second bill, at variance with the provisions of a bill already passed; and, in 1721, a prorogation for two days was resorted to, in order to enable Acts relating to the South Sea Company to be passed, contradictory to clauses contained in another Act of the same session. On the latter occasion, the Commons presented an address to the king, recommending a resort to the expedient of a prorogation, "as the ancient usage and established rules of Parliament make it impracticable" otherwise to prepare the bills.[3] Such a rule, however, was inconveniently restrictive of the discretionary power of Parliament: while recognized, it was not invariably observed,[4] and now it has been wholly set aside.

In order to avoid the embarrassment arising from the irregularity of dealing with a statute passed in the same session, it had, for many years, been the practice to add a clause to every bill, enacting, "that this Act may be amended or repealed by any Act to be passed in this session of Parliament." And by 13 & 14 Vict. c. 21, "every Act may be altered, amended or repealed in the same session of Parliament, any law or usage to the contrary notwithstanding;" and the usual clause has, therefore, been omitted from all Acts passed since the session of 1850.

Proposals for suspending or resuming bills.

Schemes have also been introduced by high authorities, to provide, either by statute or resolution, for the suspension of bills, from one session to another, or for resuming proceedings upon such bills, notwithstanding a prorogation. These schemes have been discussed in Parliament, and carefully considered by committees: but various considerations have

[1] 2 Burnet's Own Times, 467. 2 Coxe's Walpole, 8. 2 Hatsell, 127.
[2] 86 Com. J. 935.
[3] 19 Ib. 639.
[4] 4th May 1772. 33 Ib. 726.

restrained the legislature from disturbing the constitutional law by which Parliamentary proceedings are discontinued by a prorogation.[1]

[1] Earl of Derby's Parliamentary Proceedings Adjournment bill in 1848; 98 Hans. Deb. 3rd Ser. 329. 981. 1255; 99 Ib. 246; 100 Ib. 131. Report of Commons' Committee on Public Business, 1848. Report of Lords' Committee on Public Business, 1861. Report of Commons' Committee on Business of the House, 1861. Marquess of Salisbury's Parliamentary Proceedings bill in 1869; 194 Hans. Deb. 588, &c. Report of Joint Committee on Despatch of Business in Parliament, 1869. Report of Commons' Committee on Public Business, 1878.

CHAPTER XI.

RULES OF DEBATE: MANNER AND TIME OF SPEAKING: RULES AND ORDERS TO BE OBSERVED BY MEMBERS IN SPEAKING, AND IN ATTENDING TO DEBATES.

Manner of speaking.

In the House of Lords, a peer addresses his speech "to the rest of the lords in general."[1] In the Commons, a member addresses the Speaker; and it is irregular for him to direct his speech to the house, or to any party on either side of the house. A member is not permitted to read his speech, but

Reading speeches.

may refresh his memory by a reference to notes. The reading of written speeches, which has been allowed in other deliberative assemblies, has never been recognized in either house of Parliament. A member may read extracts from documents, but his own language must be delivered *bonâ fide*, in the form of an unwritten composition. Any other rule would be at once inconvenient, and repugnant to the true theory of debate.[2]

[1] Lords' S. O. No. 23.

[2] 1 Com. J. 494. 7 Hans. Deb. 208. 17 Ib. 3rd Ser. 1169, 19th Feb. 1846, Interference of peers at elections. But it seems to have been permitted in the Lords, 26th June 1845; 15 Ib. 3rd Ser. 1190. See also 1 Com. J. 272; and 17 Hans. Deb. 3rd Ser. 1281 (Mr. Cobbett). "14th May 1805, Mr. Jeffrey having read a long written speech without interruption, before putting the question, I called the attention of the house to it, and stated this to be a practice contrary to the received and established usage of debate, and necessary to be remarked upon, lest it should grow into a precedent: to which interposition the house entirely assented. At the close of the debate, Mr. J. again reading written arguments as a reply, I was called upon to interfere; and it seemed to be agreed that this was not to be done at all, except so far as resorting to notes and figures. I had in my mind the reprobation of this very practice of reading written arguments; as mentioned in vol. ii. of Grey's Debates." Lord Colchester's Diary, ii. 60. 24th Feb. 1813, Mr. Cochrane Johnstone then read a short speech, apologising for reading it (instead of delivering it in the usual way) by alleging indisposition, and the house allowed it. Ib. ii. 432. See also 223 Hans. Deb. 3rd Ser. 178; 235 Ib. 773.

In both houses, proper respect is paid to the assembly, by every member who speaks rising in his place, and standing uncovered. The only exception to the rule is in cases of sickness or infirmity, when the indulgence of a seat is frequently allowed, at the suggestion of a member, and with the general acquiescence of the house.[1] In both houses, also, during a division, with closed doors, it is the practice for members to speak sitting and covered; but this practice is confined to questions of order, arising out of the division, and does not apply to distinct motions proposed for the adoption of the house. On the 10th July 1844, after the numbers had been reported by the tellers, but before they had been declared by the Speaker, motions were made for disallowing the votes of certain members on the ground of personal interest, and as the doors were still closed, the member who made the first motion was proceeding to speak sitting and covered: but the Speaker desired him to rise in his place, and the debate proceeded in the same way as if the doors had been opened. A member may speak from the side galleries, appropriated to members, but not from below the bar.[2]

Time of speaking.

It has been said, when treating of questions, that the proper time for a debate is after a question has been proposed by the Speaker, and before it has been put; and it is then that members generally address the house or the Speaker, and commence the debate. But there are occasions upon which, from irresolution, or the belief that others are about to speak, members permit the Speaker to put the question, before they rise in their places. They are, however, entitled to be heard even after the voice has been given in the affirmative; but if it has also been given in the negative, they have lost their opportunity; the question is fully put, and

[1] Lord Wynford, 64 Lords' J. 167, Mr. Wynn, Hans. Deb. 9th March 1843; and 9th July 1844 (Sudbury Disfranchisement), Lord Lyndhurst. On the 18th June 1877, Mr. Ward-Hunt was offered this indulgence, but declined it.

[2] 246 Hans. Deb. 3rd Ser. 1363. Speaking from the galleries is inconvenient, and rarely resorted to.

nothing remains but the vote.[1] It is explained in the Standing Orders of the Lords, "that when a question hath been *entirely* put, by the Speaker, no lord is to speak against the question before voting;[2] and a question being entirely put, implies that the voices have also been given.

On the 3rd May 1819, on the debate on the Catholic Question, the Speaker had fully put the question (saying he thought the "noes" had it), when several members, including Mr. Peel and Mr. Plunket, desired to address the house; but the Speaker ruled that the debate could not be re-opened, and that if members desired to speak upon the point of order, their observations could only be delivered in the way of advice to the Speaker, by the members sitting and covered.[3]

On one occasion, in the Commons (27th January 1789), the debate was re-opened, after the question had been declared by the Speaker to have been resolved in the affirmative: for a member had risen to speak before the question had been put, but had been unobserved by the Speaker; and it was admitted that he had a right to be heard, although the question had been disposed of, before his offer to speak had attracted attention.[4]

Who entitled to speak.

In the Lords.

From the limited authority of the Speaker of the House of Lords, in directing the proceedings of the house, and in maintaining order, the right of a peer to address their lordships depends solely upon the will of the house. When two rise at the same time, unless one immediately gives way, the house call upon one of them to speak; and if each be supported by a party, there is no alternative but a division.

[1] 12th May 1606, "Any man may speak after the affirmative and before the negative." 13th February, 18 Jac., "No man to speak after a question has been once put, but the question, if doubtful, to be put again." Mr. Speaker Bromley's Note-book.

[2] Lords' S. O. No. 28.

[3] 40 Hans. Deb. 79. 3rd May, 1819, "after one negative voice given, Plunket pretended that he wished to speak, but this Mr. Wynn's solitary point of order withstood, and it was not permitted." Mr. Rickman to Lord Colchester; Lord Colchester's Diary, iii. 74.

[4] 2 Hatsell, 102, *n.*

Thus, on the 3rd February 1775, the Earl of Dartmouth and the Marquis of Rockingham both rising to speak, it was resolved, upon question, that the former "shall now be heard."[1] So again, on the 28th May 1846, in a debate on the Corn Bill, the Earl of Eglintoun, Lord Beaumont, and the Earl of Essex rose together. The Duke of Richmond moved that Lord Eglintoun be heard; but the lord chancellor then rose and moved that Lord Essex be heard, and having immediately put the question, declared that the contents had it. His decision was demurred to, but Lord Essex proceeded with his speech. On the 4th January 1811, in committee on the state of the nation, several peers rose to speak, and the chairman, Lord Walsingham, being appealed to, stated that he had no authority to call upon any noble lord to speak, in preference to another, that being a question which the house alone could determine. In the debate which ensued, several lords concurred in opinion, that though the ultimate determination was with the house, yet the lord in the chair or on the woolsack, ought in the first instance to point out the noble lord who appeared to him to have risen first.[2] And it appears that if the lord chancellor rises from the woolsack, to address the house, it is customary to give him precedence over other peers who may rise at the same time.[3]

In the Commons.

In the Commons, the member who, on rising in his place, is first observed by the Speaker, is called upon to speak: but his right to be first heard depends, in reality, upon the fact of his having been the first to rise, and not upon his being first in the Speaker's eye. It is impossible for the Speaker to embrace all parts of the house in his view at the same moment: and it may sometimes be obvious to the house, that he has overlooked a member who had the best claim to be heard. When this occurs, it is not unusual for members

[1] 34 Lords' J. 306.

[2] 18 Hans. Deb. 719, *n.*

[3] Debate on Roman Catholic Relief Bill, 3rd April 1829, when the Lord Chancellor and Lord Kenyon rose together (see speeches of Lords Holland and Farnham).

to call out the name of the member who, in their opinion, is entitled to be heard; and, when the general voice of the house appears to give him the preference, the member called upon by the Speaker usually gives way. If the dispute should not be settled in this manner, a question might be proposed, "which member was first up;" or, "which member should be heard;" or "that a particular member be heard."[1] But this mode of proceeding is very rarely adopted, and should be avoided except in extreme cases, more especially as a member is often called upon to speak, not because he was up the first, but because the house desire to hear him. It is the Speaker's duty to watch the members as they rise to speak; and, from his position in the house, he is better able to distinguish those who have priority than the house itself, and the decision should be left with him. In the Commons, not less than twenty members have often been known to rise at once, and order can only be maintained by acquiescence in the call of the Speaker.[2]

When two or more members rise together.

It occasionally happens that two members rise at the same time, and on one of them being called upon by the Speaker, the house are desirous of hearing the other. If the latter be a minister of the Crown, or have any other claim to precedence, the former rarely persists in speaking, but yields at once to the desire of the house. If, however, they should both be men of equal eminence, or supported by their respective parties; and if neither will give way, no alternative remains but a question that one of them "be now heard," or "do now speak." On the 20th March 1782, Lord North and the Earl of Surrey rose together; and on Mr. Fox moving that the latter be now heard, Lord North, with happy adroitness

[1] See debate, 12th March 1771, when a question arose between Col. Barré and Mr. Onslow, and the Speaker's call upon the latter was disputed; 2 Cavendish Deb. 386.

[2] On the 26th Feb. 1872, observations were made concerning a supposed "Speaker's List" by which his choice was governed. Such a list, however, was disclaimed by the Speaker himself, and by Mr. Gladstone on behalf of himself and the Secretary to the Treasury. 209 Hans. Deb. 3rd Ser. 1032; Mr. Speaker Brand's Note-Book.

and presence of mind, spoke to that question, and announced his resignation, which he had been anxious to communicate to the house.[1] A similar contest arose between Mr. Pitt and Mr. Fox on the 20th February 1784;[2] and more recently between Sir R. Peel and Sir F. Burdett;[3] and between Lord Sandon and Mr. Duncombe.[4] On the 9th July 1850, Mr. Locke being called upon by Mr. Speaker to proceed with a motion, of which he had given notice, and several members objecting on account of the lateness of the hour, Mr. Forbes Mackenzie rose in his place to speak upon the question that certain petitions do lie upon the table, and objection having been made to his proceeding,—a motion was made, "that Mr. Mackenzie do now speak," which was put and negatived; and Mr. Locke proceeded with his motion.[5] On the 18th May 1863, in committee of supply, the Solicitor General and Mr. Nicol both rising, the former was called by the chairman: but several members calling upon the latter, a motion was made that Mr. Solicitor General do now speak. This motion, however, was withdrawn, and Mr. Nicol proceeded to address the committee. In a debate upon a bill, the priority of a member might formerly have been determined in another way, as, on the 6th June 1604, it was agreed for a rule, "that if two stand up to speak to a bill, he against the bill (being known by demand or otherwise) to be first heard."[6] This rule, however, may be treated as obsolete; for, in order to elicit discussion, in the most convenient form, it has long been the practice for the Speaker to call upon members on either side of the house alternately, who answer one another.[7]

[1] 1 Memorials of Fox, 295.

[2] 39 Com. J. 943. On the 12th January another dispute had arisen. Mr. Pitt claimed precedence, as having a message from the king; but as Mr. Fox had been in possession of the house before Mr. Pitt rose, and was interrupted by members coming to be sworn, the Speaker decided in his favour; 24 Hans. Parl. Hist. 269.

[3] 86 Com. J. 517.

[4] 95 Ib. 557.

[5] 105 Ib. 509. 112 Hans. Deb. 3rd Ser. 1190.

[6] 1 Com. J. 232.

[7] 7th March 1592, 35 Eliz.: "At the meeting of the committees in the afternoon this point of order was settled. Two or three stood up and strove who might speak first,

Motion that a member do not speak.

As the house may determine whether members shall speak, or not, so it has been called upon to interpose directly to prevent members from speaking. Thus, on the 9th May 1604, "Sir Robert Litton offering to speak, it grew to question whether he should speak any more in this matter, and overruled that he ought not."[1] And on the 31st March 1610, "question put whether they think fit any further debate: resolved, no further debate." On the 3rd April 1845, a question that Mr. Dodd be heard upon a motion intended to be made by him was negatived.[2] On the 20th June 1880, on a motion for adjournment, Mr. O'Donnell was proceeding with grave charges against the French Ambassador, when the Speaker pointed out that such charges should not be made in that manner, but should form the subject of a distinct motion, after due notice. On Mr. O'Donnell, nevertheless, persisting in his charges, in opposition to the Speaker's ruling, and at the risk of a misunderstanding with a friendly power, Mr. Gladstone moved, "That Mr. O'Donnell be not now heard." The motion was well fitted for such an occasion, and, if carried by acclamation, would have presented a good example of the value of an ancient rule: but being open to debate, and amendment, it provoked an angry discussion, and was eventually withdrawn.[3]

Precedence to member who has moved the adjournment of the debate.

On resuming an adjourned debate, the member who moved its adjournment is, by courtesy, entitled to speak first; but for that purpose, he must rise in his place at the proper time, in order to avail himself of his privilege. On the 6th May 1853, the Speaker said, "According to the practice of the house, when any honourable member moves the adjournment of a debate, he is said to be in possession of the house: but it is not on that account that the Speaker calls on that member

and it was proposed by Mr. Speaker (who was present) as an order of the house, in such a case, to ask the parties on which side they would speak, whether with him that spake next before, or against him, and the party that speaketh against the last speaker is to be heard first;" Mr. Speaker Bromley's Note-Book.

[1] 1 Com. J. 205. 968.

[2] 100 Ib. 191.

[3] 135 Ib. 206. 252 Hans. Deb. 3rd Ser. 1902. 1917.

when the question is put, on the resumption of the debate; because unless he rises and addresses the chair, it is not the duty of the Speaker to call upon him. It often happens, indeed, that when a member moves the adjournment of a debate, he does not take advantage of his privilege of opening the debate, on the following night. If, however, he rises in his place when the question is put, and another member rises at the same time, he is entitled to precedence: but that depends upon the member himself, who ought to rise in his place, if he wishes to claim any privilege."[1] But it has been ruled that where a member has moved or seconded a motion for the adjournment of a debate, and his motion has been negatived, he is not entitled to speak again to the main question;[2] and that the member whose subsequent motion for adjournment had been agreed to, was, therefore, entitled to be called upon, on resuming the debate.[3]

When a debate has been adjourned, upon a Wednesday, at a quarter before six, by virtue of the Standing Order, while a member was speaking, he has been allowed to resume the adjourned debate, and continue his speech.[4] A member having spoken upon the question that a bill be now read a second time, without concluding with an amendment, cannot afterwards move such an amendment, having been already heard upon the original question.[5]

[1] 126 Hans. Deb. 3rd Ser. 1243. This rule has since been repeatedly maintained by the Speaker, as in the case of Mr. Warren, 9th Feb. 1858.

[2] Mr. Beresford Hope and Mr. Cavendish Bentinck, 15th and 16th March 1869; 194 Hans. Deb. 3rd Ser. 1451. 1497; 227 Ib. 1098; 232 Ib. 1341.

[3] Galway Election, 8th August 1872 (Sir Colman O'Loghlen). 213 Hans. Deb. 3rd Ser. 761. On the 6th July 1874, Mr. Jenkins having moved the adjournment of the debate upon the second reading of the Church Patronage (Scotland) Bill, which was negatived, and Mr. Anderson having moved the adjournment of the house, which was also negatived, Mr. Cameron moved the adjournment of the debate, which was agreed to; and accordingly, on the resumption of the debate, on the 13th July, the latter rose and was called upon by the Speaker. See also p. 363.

[4] Hypothec (Scotland) Bill, 21st July 1869 (Mr. Orr Ewing).

[5] 191 Hans. Deb. 3rd Ser. 1083.

New members.

A new member who has not previously spoken, is generally called upon, by courtesy, in preference to other members, rising at the same time: but this privilege will not be conceded unless claimed within the Parliament to which the member was first returned.[1]

Priority, where notices of amendments given.

A difficulty sometimes arises where notices have been given of several amendments to a question, as on going into committee of supply. The member who rises first, after the question has been proposed, is entitled to be heard: but the members who have given notices of amendments are ordinarily called, as far as possible, in the order in which they stand upon the notice paper.[2]

Must speak to the question.

When a member is in possession of the house (as it is called), he has not obtained a right to speak generally: but is only entitled to be heard upon the question then under discussion, or upon a question or amendment intended to be proposed by himself,[3] or upon a point of order. Whenever he wanders from it, he is liable to be interrupted by cries of "question;" and in the Commons, if the topics he has introduced are clearly irrelevant, the Speaker acquaints him that he must speak to the question.[4] Thus, he has pointed out that, upon a motion for the appointment of a Committee upon the Game Laws, a member could not enter into a criticism of the various provisions of certain bills before the house, for the amendment of those laws;[5] nor, during the debate upon any stage of a bill, is a member, who moves the adjournment of the house, at liberty to discuss any matter but reasons for such adjournment.[6] The relevancy of an argument is not always perceptible,[7] and the impatience and

[1] On the 25th March 1859, it was claimed in vain for Mr. Beaumont, who had sat in the previous Parliament.

[2] 163 Hans. Deb. 3rd Ser. 1424, 1486.

[3] 59 Ib. 507.

[4] "If any man speak not to the matter in question, the Speaker is to moderate." 18th May 1604, 1 Com. J. 975.

[5] 195 Hans. Deb. 3rd Ser. 1718.

[6] Standing Order, 28th November 1882.

[7] See the celebrated debate, 6th May 1791, on the Quebec Govern-

weariness of members after a long debate, often cause vociferous interruptions of "question," which do not signify that the member who is speaking is out of order, so much as that the house are not disposed to listen to him. These cries are disorderly, and, when practicable, are repressed by cries of "order" from the house and the Speaker: but nevertheless, when not mistimed, they often have the intended effect, and discourage a continuance of the debate. When they are immoderate and riotous, they not only disgrace the proceedings of the house, but frequently defeat the object they are intended to attain, by causing an adjournment of the debate. Akin to irrelevancy is the frequent repetition of the same arguments, by which the forbearance of the house is sorely tried.[1] On the 25th January 1881, Mr. Speaker having repeatedly called Mr. Biggar to order, who nevertheless insisted upon pursuing the same line of argument, named him as disregarding the authority of the chair; and Mr. Biggar was accordingly suspended.[2]

Irrelevance or repetition.

Such aberrations from a proper argument have ever been condemned as irregular. On the 14th April 1604, it was agreed that "if any man speak impertinently or beside the question in hand, it stands with the orders of the house for Mr. Speaker to interrupt him; and to have the pleasure of the house, whether they will further hear him."[3] Again, on the 17th April 1604, it was agreed for a general rule, that if any superfluous motion or tedious speech be offered in the house, the party is to be directed and ordered by Mr. Speaker.[4] And on the 31st March 1610, "it was conceived for a rule that Mr. Speaker may stay impertinent speeches."[5] In order to give prompt and practical effect to this ancient and acknowledged

ment bill, in which Mr. Burke insisted upon the relevancy of Paine's Rights of Man, and the recent events of the French Revolution. 2 Lord J. Russell's Life of Fox, 253.

[1] 240 Hans. Deb. 3rd Ser. 1662.

[2] 257 Hans. Deb. 3rd Ser. 1349.

[3] 1 Com. J. 172.

[4] 1 Ib. 948; Mr. Speaker Bromley's Note-book.

[5] 1 Com. J. 423.

rule, it was provided by Standing Order, 27th November 1882, that—

"Mr. Speaker, or the Chairman of Ways and Means, may call the attention of the House, or of the Committee, to continued irrelevance or tedious repetition on the part of a member; and may direct the member to discontinue his speech."

Debates on motions for adjournment.

Considerable laxity had long prevailed in allowing irrelevant speeches upon questions of adjournment,[1] which were regarded as exceptions to the general rule. In 1849, the Speaker endeavoured to enforce a stricter practice, and called upon members to confine their observations upon such motions to the question properly before the house, viz., whether the house should adjourn or not.[2] But the house was reluctant to acquiesce in any limitation of the supposed privilege of members, to speak upon every subject but that of the colourable question of adjournment. In moving an adjournment, however, during a debate upon any question, it was necessary that a member should confine his remarks to that question.[3] But this restriction was found inadequate for ensuring the rational conduct of debates, and on the 27th November 1882, the following Standing Orders were made, in further restraint of discussions upon questions of adjournment:—

"That when a motion is made for the adjournment of a debate, or of the house, during any debate, or that the chairman of a committee do report progress, or do leave the chair, the debate thereupon shall be confined to the matter of such motion; and no member, having moved or seconded any such motion, shall be entitled to move, or second, any similar motion during the same debate.

"That if Mr. Speaker, or the chairman of a committee of the whole house, shall be of opinion that a motion for the adjournment of a debate, or of the house, during any debate, or that the chairman do report progress, or do leave the chair, is an abuse of the rules of the house, he may forthwith put the question thereupon from the chair."

Motions for the adjournment of the house, when there is

[1] See Hans. Deb. 23rd and 26th June, and 24th and 25th Aug. 1848.

[2] See Hans. Deb. 5th Feb. and 22nd Feb. 1849; 102 Hans. Deb. 3rd Ser. 1100.

[3] 232 Hans. Deb. 3rd Ser. 1733.

no question under discussion, must be clearly distinguished from similar motions during a debate. The former can have no object but the discussion of some extraneous subject; the latter has reference only to the adjournment of the question then before the house.

Until the discontinuance of the weekly question of adjournment from Friday till Monday, in 1861, an inconvenient latitude of discussion was permitted. Nor did the house deprive members of this opportunity of raising general debates, without an equivalent: but required the committee of supply to be the first order of the day on Friday, when there is the like freedom of discussion.

No amendment admissible to question of adjournment, except as to time.

But though irrelevant discussions have been permitted on certain questions of adjournment, it should be well understood that no amendment can be proposed to such questions unless it relate to the time of adjournment. On Friday, 25th April 1856, on the question of adjournment till Monday, a noble lord rose to move an amendment relating to a day of thanksgiving on the restoration of peace, when the Speaker acquainted him that such an amendment was quite irregular; the only amendment which could be moved being that the house shall adjourn to some other day than Monday.[1] On Tuesday, the 27th May 1856, it was ruled,[2] that on the question "that the house, at its rising, do adjourn till Friday," an amendment to leave out the words "at its rising," in order to insert the word "now," was not admissible; the question "that this house do now adjourn" being always put as a distinct question, having no reference to the time at which it is proposed that the house should meet again. Accordingly, as soon as the question had been agreed to, a motion was made that this house do *now* adjourn.[3] No motion for the adjournment of the house can be made, while a question for the adjournment of the debate is under discussion.[4] Nor will a question of

[1] 141 Hans. Deb. 3rd Ser. 1541; and again, 242 Ib. 2076.

[2] Privately.

[3] 111 Com. J. 221.

[4] 260 Hans. Deb. 3rd Ser. 1617.

privilege be allowed to be raised, upon a motion for the adjournment of the house.[1]

Orders of the day and notices not to be discussed on question of adjournment.

Nor under cover of a question of adjournment, is it competent for a member to discuss the subject of any order of the day, as the house has appointed another time for its consideration; nor of any motion of which notice has been given. On Friday, the 7th March 1856, a member rose on the question for adjournment till Monday, to call attention to the Metropolis Local Management Bill, which stood as an order of the day, for the same day. On proceeding to advert to that bill, the Speaker interposed, and stated that it was highly irregular to anticipate, in this manner, the discussion of the order of the day, more particularly as the honourable member had a notice on the paper to move the postponement of the bill.[2] On Friday, 17th July 1857, on the question of adjournment till Monday, a noble lord raised a debate upon the subject of a bill of which he had given notice for the same evening; and being called to order, endeavoured to set himself right by moving "that this house do now adjourn," a course which, in no respect, corrected the irregularity.[3] Again, on the 24th November 1882, the Speaker explained that it was an established and fundamental rule of debate that, on a motion for adjournment, a motion standing on the Order Book could not be discussed, and that this rule was, in no way, affected by the new Standing Order regulating motions for adjournment,[4] and this rule applies even when no day has been fixed for a motion.[5]

The same restraint is imposed on members, in debates on going into committee of supply and ways and means, where a similar latitude of discussion is otherwise permitted. On the 5th June 1856, on the question that the Speaker do leave the chair to go into committee of supply, a discussion upon

[1] 154 Hans. Deb. 3rd Ser. 445.
[2] 140 Ib. 2037.
[3] 146 Ib. 1699. See also 176 Ib. 1797; 185 Ib. 886; 187 Ib. 775; 189 Ib. 91; 210 Ib. 1815.
[4] 275 Hans. Deb. 3rd Ser. 26.
[5] 238 Ib. 1492.

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the Tenant Right Bill, which had been read a second time and appointed for committee on a future day, was stopped by the interposition of the Speaker.[1] And the same rule has been uniformly enforced in all later cases, whenever attempts have been made to anticipate the discussion of motions or bills already appointed for consideration.[2] In June 1863, Mr. Osborne having given notice of an amendment to a motion of Mr. Dillwyn, relative to the Church of Ireland, withdrew that notice of amendment after the first night's debate, and gave notice of it, as an independent amendment, on going into supply. This course was obviously irregular, as anticipating the adjourned debate upon Mr. Dillwyn's motion; and the matter was ultimately arranged by discharging the order for resuming the adjourned debate; and the ground being thus cleared, Mr. Osborne, on the 26th June, brought forward his amendment on going into committee of supply.

On the 25th May 1875, the Speaker ruled that Mr. Dillwyn could not bring on a motion, of which he had given notice, concerning the exclusion of strangers, as an order of the day had been appointed for the ensuing Monday, for resuming an adjourned debate upon the first of three resolutions, of which the two latter related to the same subject. These resolutions were comprised in the same order of the day, and their discussion would be anticipated, if the present notice were proceeded with.[3]

Restraints on discussion of bills.

It is not regular to discuss the merits of a bill, or other order of the day, upon a motion for its postponement. Otherwise, the merits of a bill might be debated not only upon its several stages, but whenever its postponement is proposed. And, further, the discussion of each stage might be anticipated, by resuming debates before the day appointed for its consideration by the house.[4] On 1st June 1875, a member

[1] 142 Hans. Deb. 1026.

[2] 153 Hans. Deb. 3rd Ser. 333; 157 Ib. 116. 1804; 159 Ib. 348; 165 Ib. 799; 167 Ib. 1139; 189 Ib. 91. 96; 210 Ib. 1815; 211 Ib. 1281; 212 Ib. 1430; 219 Ib. 1054; 238 Ib. 1492; 239 Ib. 1249; 241 Ib. 807; 242 Ib. 1443.

[3] 224 Ib. 915.

[4] 240 Ib. 858.

having moved the postponement of the second reading of a bill, from the next day until a more distant day, another member rose to move that the order be discharged; but upon the Speaker representing the inconvenience and impropriety of such an amendment, which would raise a debate upon the merits of the bill, when its postponement only was in question, the amendment was not proceeded with.[1] Nor is it regular to anticipate, by a question, the discussion of a motion of which notice has been given, or of any bill already pending.[2]

The same rule has been applied to restrain the discussion of a bill which has been passed, and sent to the Lords. On the 4th April 1876, it being proposed that a motion of Mr. Fawcett, for an address to the Crown, on the Royal Titles, should be discussed on Friday next, the Speaker pointed out that the Royal Titles Bill, which had passed the Commons, stood for third reading, in the Lords, on that day, and that it would be irregular to discuss the proposed motion until the bill had been passed by the Lords. The motion was accordingly appointed for the following Monday.[3]

When no question is before the house.

It is a rule that should always be strictly observed, that no member may speak except when there is a question already before the house, or the member is about to conclude with a motion or amendment. The only exceptions which are admitted are, 1, in putting questions to particular ministers or other members of the house; and, 2, in explaining personal matters: but in either of these cases the indulgence given to a particular member will not justify a debate.

Questions to other members.

1. In both houses questions are constantly put to ministers of the Crown[4] concerning measures pending in Parliament, or public affairs and matters of administration; and to particular members who have charge of a bill, or who have given notices of motions, or are otherwise concerned in some business before the house.[5] A question may be asked concerning

[1] 224 Hans. Deb. 3rd Ser. 1235.

[2] 228 Ib. 1557. 1764.

[3] Ib. 1183.

[4] Perhaps the earliest example of a question to ministers is to be found on the 9th February 1721, when Lord Cowper asked a question of the administration, and was answered by the Earl of Sunderland. 7 Parl. Hist. 709.

[5] 192 Hans. Deb. 3rd Ser. 717.

the intentions of the Government, in any matters of legislation or administration, but not as to their abstract opinions upon general questions of policy.[1] When a question affects the character of a member, or reflects upon the conduct of other persons, it is more properly the subject of a motion which can be conveniently debated.[2] Notice is usually given of such questions in the Votes,[3] unless they relate to some matter of urgency, or to the course of public business. But no notice can be given of a question to be addressed to the Speaker, who can only be properly appealed to, on points of order, as they arise in debate, or otherwise directly concern the proceedings of the House.[4] All questions should be limited, as far as possible, to matters immediately connected with the business of Parliament, or administration;[5] and should not involve opinion, argument, inference, imputations, irony, or hypothetical cases; nor are any facts to be stated, unless they be necessary to make the question intelligible, and can be authenticated.[6] An answer should be confined to

Of late years, questions have been permitted to the chairman, or other member of the Metropolitan Board of Works, as being concerned in the administration of the metropolis. Hans. Deb. 14th March 1859; 12th May 1864; 27th April and 14th May 1868; 13th May 1869; 22nd June 1871; 14th March 1872. 209 Hans. Deb. 3rd Ser. 1954; 17th February 1878; Mr. Speaker Brand's Note-Book. Also to the chairman or other members of royal commissions; 18th Feb., 12th March 1868; 12th April 1869; 15th Feb., 11th April, 30th June 1870; 28th March and 25th May 1871. Also to trustees of the British Museum; 26th April 1869; 6th and 16th May 1870; 234 Hans. Deb. 3rd Ser. 1239; 235 Ib. 684.

[1] 204 Hans. Deb. 3rd Ser. 1764.

[2] See Mr. Speaker's observations, 210 Hans. Deb. 3rd Ser. 39; 213 Ib. 554.

[3] It was not until 1849 that a special place was assigned to such questions in the notice paper; and I can find no example of a question being printed at all before 1835 (27th February and 25th March 1835).

[4] 155 Hans. Deb. 3rd Ser. 870; 198 Ib. 368; 261 Ib. 695; 271 Ib. 1622.

[5] See Speaker's ruling, 22nd Feb. 1849; 102 Hans. Deb. 3rd Ser. 1100; and 155 Ib. 1345; and 22nd May 1862; 166 Ib. 2027; 29th April 1864; 174 Ib. 1914; 17th Dec. 1878.

[6] Hans. Deb. 13th Dec. 1847. See also Hans. Deb. 12th June, 1853 (Sir F. Baring); 4th, 11th and 18th May 1855; 17th July 1857; 25th August 1860; 6th May 1864; 175 Hans. Deb. 3rd Ser. 101; 203 Ib. 262; 204 Ib. 176; 206 Ib. 1602; 208 Ib. 781. 783. 842; 210 Ib. 1088; 247 Ib. 430; 270 Ib. 1132.

the points contained in the question, with such explanation only as will render the answer intelligible, without discussion:[1] but a certain latitude is sometimes permitted, by courtesy, to ministers of the Crown.[2] It is irregular to refer to past debates of the same session, either in a question or answer, but a departure from this rule has been occasionally permitted, in order to clear up misunderstandings.[3] When a question has been fully answered, a member will not be allowed to repeat it.[4] A minister may decline to answer a question, in the interests of the public service. Where notice has been given of an irregular question, it is either corrected at the table,—if possible, in conference with the member himself,—or wholly omitted by direction of the Speaker. On the 24th May 1878, Dr. Kenealy complained of this practice as a breach of privilege, obstructing the freedom and independence of members: but its propriety was fully explained by the Speaker, and supported in debate as being in accordance with the rules of the house.[5]

The adjournment of the house had often been moved, in putting questions, but such a course was generally reserved for occasions of urgency;[6] and, if otherwise used, was met by the house with impatience and disfavour, and by grave remonstrances from the chair.[7] And, at length, the inconvenience became so serious that the following Standing Order was made, on the 27th November 1882:—

Motions for adjournment before public business.

"That no motion for the adjournment of the house shall be made until all the questions on the notice paper have been disposed of, and no such motion shall be made before the orders of the day, or notices of motions have been entered upon, except by leave of the house, unless a member rising in his place shall propose to move the adjournment, for the purpose of discussing a definite matter of urgent public importance, and not less than forty members shall thereupon rise in

[1] 240 Hans. Deb. 3rd Ser. 1617; 241 Ib. 964.

[2] 161 Ib. 497; 174 Ib. 1423; 209 Ib. 466; 210 Ib. 153. 596.

[3] 210 Ib. 251.

[4] 225 Ib. 792. 952. 1142; 235 Ib. 1796.

[5] 240 Ib. 643; 270 Ib. 1409; see also *supra*, p. 295.

[6] 196 Ib. 19.

[7] 233 Ib. 978; 234 Ib. 33. 1301; 237 Ib. 1539; 238 Ib. 1951; 241 Ib. 130; Mr. Speaker Brand's Note-Book, 14th June 1872; and 12th April 1877.

their places to support the motion; or unless, if fewer than forty members and not less than ten shall thereupon rise in their places, the house shall, on a division, upon question put forthwith, determine whether such motion shall be made."

Precedents.

When members have since availed themselves of this Standing Order, the Speaker has desired them to state, in writing, the matter of urgent public importance, which they desire to discuss, before the pleasure of the house is taken; and it is for the house itself to judge whether the matter so stated be of such urgent public importance as to warrant the setting aside of the other business, appointed for the day, in favour of a motion for adjournment.[1] All rules restricting irregular discussions upon motions for adjournment, apply equally to motions when made under this Standing Order.[2] If less than forty members rise in their places in support of the adjournment, the house will proceed at once to the orders of the day, or other business, unless ten members should then rise and claim a division.[3]

Sometimes when an answer has been given, further questions are addressed to the minister upon the same subject, but no observations or comments are then permitted to be made.[4]

Questions briefly put.

In 1880, the practice of reading questions was discontinued, and members have been contented to refer to the number of the question on the Notice Paper.[5] And on the 4th July 1881, it was suggested that notices of questions should not be read, but brought to the table.[6]

In the Lords, a greater license of debate is permitted, in putting and answering questions, and commenting upon them, without any question being before the house.[7] In 1867, the Lords' committee on public business, while recognizing and approving this practice, recommended that notice of questions should be given in the minutes, except in cases

[1] 137 Com. J. 515, 516. 518, 519; Hans. Deb. 14th, 15th, 23rd, 24th, 28th and 30th Nov. 1882.

[2] 275 Hans. Deb. 3rd Ser. 26.

[3] 275 Ib. 409.

[4] 211 Ib. 1994; 212 Ib. 298. 1624.

[5] 253 Ib. 1920; 255 Ib. 311; Mr. Speaker Brand's Note-Book.

[6] 262 Hans. Deb. 3rd Ser. 1966.

[7] Hans. Deb. 14th Dec. 1847.

of urgency. And on the 2nd April 1868, it was resolved, "That it is desirable when it is intended to make a statement or raise a discussion, on asking a question, that notice of the question should be given in the orders of the day and notices."[1] And under these conditions, important debates are frequently raised.

If questions are put to ministers, when a question for adjournment has been proposed, a minister will not be permitted to answer a second question, as he has already spoken.[2] Sometimes replies have been given to questions addressed to ministers on a previous day, without a repetition of the question.[3]

Personal explanation.

2. In regard to the explanation of personal matters, the house is usually indulgent; and will permit a statement of that character to be made without any question being before the house. General arguments, however, or observations beyond the fair bounds of explanation, or too distinct a reference to previous debates, ought not to be used by the member who is permitted to speak, under these circumstances:[4] but if his object be clearly confined to the removal of any impression concerning his own conduct or words, he is generally permitted to proceed without interruption. This indulgence, however, should be granted with caution; for, unless discreetly used, it is apt to lead to irregular debates.[5] In one case personal explanations were permitted to be made by one member, on behalf of another who was abroad.[6]

[1] 100 Lords' J. 103.

[2] Hans. Deb. 11th Feb. 1853, &c.

[3] Ib. 17th May 1852 (Frome Vicarage).

[4] Lord C. Paget, 14th March 1864; 173 Hans. Deb. 3rd Ser. 1913.

[5] See Hans. Deb. 10th and 12th Feb. 1857; 16th April 1858; 4th June 1863 (Holyhead Packets). Lord Castlereagh, Lord J. Russell, and Mr. Disraeli, 19th April 1849; also cases of Mr. Keogh, Hans. Deb. 16th June 1853; of Mr. Stuart Wortley, 17th March, and of Mr. T. Duncombe, 18th March 1859; Lord Clarence Paget and Lord Robert Montagu, 23rd Feb. 1863; Mr. Sheridan and the Chancellor of the Exchequer, 17th March 1864; 174 Hans. Deb. 3rd Ser. 191; Mr. Lowe, Lord R. Cecil, Mr. Disraeli and Mr. Walter, 18th April 1864; 174 Ib. 1203. Mr. Baillie Cochrane, the Chancellor of the Exchequer, and Mr. Roebuck, 28th March 1865; 178 Ib. 372, &c.

[6] Mr. Bright, 16th March 1860, for Mr. Cobden.

Explanations have also been allowed on behalf of gentlemen whose conduct had been reflected upon in debate.[1]

To speak once only.

It is a rule strictly to be observed in both houses, that no member shall speak twice to the same question, except, 1st, to explain some part of his speech which has been misunderstood; 2ndly, in certain cases, to reply at the end of a debate; and 3rdly, in committee.

To explain.

1. It is an ancient order of the House of Lords, that—

"No man is to speak twice to a bill at one time of reading it, or to any other proposition, unless it be to explain himself in some material part of his speech: but no new matter, and that not without the leave of the house first obtained. That if any lord stand up and desire to speak again, or to explain himself, the lord keeper is to demand of the house first whether the lord shall be permitted to speak or not; and that none may speak again to the same matter, though upon new reason arising out of the same; and that none may speak again to explain himself, unless his former speech be mistaken, and he hath leave given to explain himself; and if the cause require much debate, then the house to be put into committee."[2]

In the Commons, the privilege of explanation is allowed without actual leave from the house: but when a member rises to explain, and afterwards adverts to matters not strictly necessary for that purpose, or endeavours to strengthen by new arguments his former position, which he alleges to have been misunderstood, or to reply to other members, he is called to order by the house or by the Speaker, and is desired by the latter to confine himself to simple explanation.[3] But here, again, a greater latitude is permitted in cases of personal explanation, where a member's character or conduct has been impugned in debate.[4]

Proper time for explanation.

The proper time for explanation is at the conclusion of the speech which calls for it: but it is a common practice for the

[1] Case of Dr. Beke, 29th Nov. 1867; 190 Hans. Deb. 3rd Ser. 422; case of Mr. Reed, 210 Ib. 403.

[2] 3 Lords' J. 590. Lords' S. O. No. 25.

[3] 165 Hans. Deb. 3rd Ser. 1032; 167 Ib. 1216. Mr. Lowe and Lord R. Cecil, 13th May 1864; 175 Hans. Deb. 3rd Ser. 462; 223 Ib. 367. 1009; 226 Ib. 525. 567; 231 Ib. 301; 241 Ib. 332; 242 Ib. 1709.

[4] 15th June 1846 (Sir R. Peel and Mr. Disraeli).

member desiring to explain, to rise immediately the statement is made to which his explanation is directed, when, if the member in possession of the house gives way and resumes his seat, the explanation is at once received: but if the member who is speaking declines to give way, the explanation cannot then be offered.[1]

A second speech has been allowed to a minister, who had spoken early in the debate, in answer to a question which had rendered a ministerial explanation necessary,[2] or to answer a question addressed to him after he had spoken;[3] and also to members who had merely spoken upon an incidental issue, and not upon the main question.[4]

Reply.

2. A reply is only allowed, by courtesy, to the peer or member who has proposed a substantive question to the house. It is not conceded to a member who has moved any order of the day, as that a bill be read a second time; nor to the mover of an instruction to a committee of the whole house,[5] or to a select committee,[6] or of a motion for referring a bill to a committee specially constituted, and enlarging its terms of reference,[7] nor to the mover of any amendment,[8] or of the previous question, which is in the nature of an amendment.[9] Under these circumstances, it is not uncommon for a member to move an order of the day, or second a motion without remark, and to reserve his speech for a later period

[1] See explanation of this rule as stated by the Speaker, 24th Nov. 1819; 41 Hans. Deb. 157. 27th March 1860, Mr. Gladstone and Mr. Whiteside; 157 Hans. Deb. 3rd Ser. 1407. Mr. Gladstone and Mr. Newdegate, 27th May 1861; 163 Ib. 83. Mr. Denman and the Chancellor of the Exchequer, 19th May 1865; 179 Ib. 572. Mr. Maguire and Sir R. Peel, 11th May 1866; 183 Ib. 800. Mr. Lawson and Mr. Gathorne Hardy, 22nd May 1868; 192 Ib. 749; 208 Ib. 343. 1190; 213 Ib. 728.

[2] Lord J. Russell, 3rd Feb. 1852; 119 Hans. Deb. 3rd Ser. 88. 153.

[3] The Attorney General, 8th April 1864; 174 Hans. Deb. 3rd Ser. 695.

[4] Government Annuities Bill, 7th March 1864 (the Chancellor of the Exchequer and Mr. H. B. Sheridan); 173 Hans. Deb. 3rd Ser. 1549.

[5] 186 Hans. Deb. 3rd Ser. 1443.

[6] Conventual and monastic institutions, 9th May 1870 (Mr. Matthews).

[7] Charing Cross and Victoria Embankment Bill, 1873 (Lord Elcho).

[8] 174 Hans. Deb. 3rd Ser. 2022; 240 Ib. 1527.

[9] 8th Feb. 1858 (Operations in India, Mr. Disraeli).

in the debate. Formerly a member who had moved an order of the day, or seconded a motion, was precluded from afterwards addressing the house upon the same question, or was heard merely by the indulgence of the house:[1] but of late years, the option of speaking at a subsequent period of the debate has been conceded, whenever the moving or seconding is confined to the formality of raising the hat.[2] But in moving an amendment, a member cannot avail himself of this privilege,[3] as he must rise in his place to move an amendment, and thus cannot avoid addressing the house, however shortly. And as a member who moves an amendment cannot speak again, so a member who speaks in seconding an amendment, is equally unable to speak again upon the original question, after the amendment has been withdrawn, or otherwise disposed of. In both cases, the members have already spoken while the question was before the house, and before the amendment had been proposed from the chair.[4] For the same reason, a member who has addressed the house in moving the second reading of a bill, cannot move the adjournment of the debate, unless an amendment has been since proposed.[5] In some cases the indulgence of the house has been extended so far as to allow an explanatory reply, on questions which do not come within the ordinary rules of courtesy.[6] A reply is permitted upon a substantive motion for an adjournment,[7] but is never allowed upon a motion for adjournment to supersede a question.

3. In a committee of the whole house the restriction upon In committee.

[1] 28th Feb. 1821; 4 Hans. Deb. N. S. 1013.

[2] 19th March 1872; 210 Hans. Deb. 3rd Ser. 304.

[3] Mr. Bernal Osborne, 21st July 1851; 118 Hans. Deb. 3rd Ser. 1147. 1163. Mr. Lowe, 11th June 1855; 138 Ib. 1300. 1756.

[4] 237 Ib. 1532; 240 Ib. 123; 241 Ib. 1311.

[5] 227 Ib. 1659.

[6] Hans. Deb. 1st March 1844 (Mr. T. Duncombe's amendment). 5th July 1855 (Police in Hyde Park). 139 Hans. Deb. 3rd Ser. 463. 17th March 1857; 144 Ib. 2398.

[7] 5th Feb. 1858. 4th April 1859 (Ministerial explanations). 11th April 1867; 186 Hans. Deb. 3rd Ser. 1505; 207 Ib. 1350; 210 Ib. 1846; 17th Dec. 1878, &c.

speaking more than once is altogether removed, as will be more fully explained in speaking of the proceedings of committees.[1]

New question.

The adjournment of a debate does not enable a member to speak again upon a question, when the discussion is renewed on another day, however distant:[2] but directly a new question has been proposed, as, "that this house do now adjourn," "that the debate be adjourned," "the previous question,"[3] or an amendment, members are at liberty to speak again; as the rule applies strictly to the prevention of more than one speech to each separate question proposed. Upon the same grounds, a member who has already spoken, may rise and speak again upon a point of order or privilege: but a member who has already spoken to a question, may not rise again to move an amendment, or the adjournment of the house or of the debate, or any similar question, though he may speak to these new questions when proposed by other members. When a member has moved the adjournment of a debate, which is negatived, he has forfeited his right to speak upon the main question, or to move an amendment.[4] For the same reason, a member who has moved an amendment, which has been negatived, cannot speak to the original question, having already spoken to that question, in moving that amendment.[5] A member speaking to a question of order, must confine himself to that question, and may not refer to the general tenour of a speech.[6] So also a member, who has moved or seconded the adjournment of a debate, may not afterwards rise to move or second the adjournment of the house, having already spoken in the debate. On the 17th June 1870, no less then ten divisions took place upon questions of adjournment, in order to defeat the Clerical Disabilities Bill. On this occasion, the rule which prevents a

[1] Chapter XIII.

[2] 1 Com. J. 245.

[3] 65 Hans. Deb. 3rd Ser. 826.

[4] Case of Mr. Shaw, on the Address, 5th Feb. 1880, who having given notice of an amendment, moved the adjournment of the debate, which was negatived, and so forfeited his right to move the amendment.

[5] 190 Hans. Deb. 3rd Ser. 674; 211 Ib. 870; 212 Ib. 1118.

[6] 195 Ib. 2008.

member, who has already moved or seconded a motion for adjournment, from making another similar motion,—or in other words which prohibits a member from speaking twice to the same question,—was strictly enforced; and as the minority was reduced to 21, it happened that not more than six members of that party were in a condition to move further adjournments. Hence, if the contest had been continued, the force of the minority would have been exhausted by three more divisions. At this period, however, the struggle was brought to a close: a division was taken on the main question, and the house adjourned at a quarter before four in the morning. Further restraints have been imposed upon such proceedings as these, by recent Standing Orders, already referred to.[1]

Order in debate.

For preserving decency and order in debate, various rules have been laid down, which, in the Lords, are enforced by the house itself, and in the Commons by the Speaker in the first instance, and, if necessary, by the house. The violation of these rules any member may notice, either by a cry of "order," or by rising in his place, and, in the Lords, addressing the house, and, in the Commons, the Speaker. The former mode of calling attention to a departure from order is, perhaps, not strictly regular, and sometimes interrupts a member, and causes disturbance; but it is often practised with good effect: it puts the member who is irregular in his conduct upon his guard, arouses the attention of the house and the Speaker, and prevents a speech to order, a reply, and perhaps an angry discussion. When a member speaks to order, he should simply direct attention to the point complained of, and submit it to the decision of the house or the Speaker.

Rules for members speaking.

The rules for the conduct of debates divide themselves into two parts, viz.: I., such as are to be observed by members addressing the house; and, II., those which regard the behaviour of members listening to the debate.

[1] *Supra*, p. 353.

I. (1) A member, while speaking to a question, may not allude to debates of the same session upon any question or bill not then under discussion; (2), nor speak against, or reflect upon, any determination of the house, unless he intends to conclude with a motion for rescinding it; (3), nor allude to debates in the other house of Parliament; (4), nor utter treasonable or seditious words, or use the Queen's name irreverently, or to influence the debate; (5) nor speak offensive and insulting words against the character or proceedings of either house; (6), nor against particular parties or members of the house, in which he is speaking: to which may be added (7), nor abuse the rules of the house in order to obstruct public business. A few words will suffice to explain the object and application of each of these rules.

Referring to prior debates.

(1.) It is a wholesome restraint upon members, to prevent them from reviving a debate already concluded: for otherwise a debate might be interminable; and there would be little use in preventing the same question or bill from being offered twice in the same session, if, without being offered, its merits might be discussed again and again.[1] The rule, however, is not always strictly enforced: peculiar circumstances may seem to justify a member in alluding to a past debate, or to entitle him to indulgence, and the house and the Speaker will judge, in each case, how far the rule may fairly be relaxed. On the 30th August 1841, for instance, an objection was taken that a member was referring to a preceding debate, and that it was contrary to one of the rules of the house. The Speaker said, "That rule applied in all cases: but where a member had a personal complaint to make, it was usual to grant him the indulgence of making it."[2] And again on the 7th March 1850, he said, "The house is always willing to extend its indulgence, when an

[1] See Hans. Deb. 28th Feb. 1845, where Mr. Roche had come from Ireland on purpose to ask Mr. Roebuck a question, but was stopped by Mr. Speaker; 7th August 1876; 231 Hans. Deb. 3rd Ser. 749; 238 Ib. 1403.

[2] 59 Ib. 486. See also 65 Ib. 642, 26th July 1842.

honorable member wishes to clear up any misrepresentation of his character: but that indulgence ought to be strictly limited to such misrepresentations, and ought not to extend to any observations other than by way of correction."[1] Again, on the 3rd March 1856, a noble lord was allowed to refer to a former debate by way of personal explanation, but directly he proposed to introduce new matter he was stopped by the Speaker, with the general acquiescence of the house;[2] and the same rule was explained and enforced on the 26th February 1858,[3] on the 4th June 1863, and on other occasions.[4] Nor is a member allowed to refer to a speech made in a committee of the whole house.[5] This rule, however, does not apply to debates upon different stages of a bill; and after the passing of an act, allusions have been allowed to debates during its progress, while discussing a proclamation issued under that act.[6] And upon a motion for practically rescinding a resolution of the house, reference has been permitted to the debate upon that resolution.[7] There appears, however, to be a technical difficulty in the strict enforcement of the rule in committee, where a debate in another committee is referred to, as one committee is not supposed to be cognisant of the debates of another.[8]

Reading from newspapers.

A member may not read any portion of a speech, made in the same session, from a printed book or newspaper.[9] This rule, indeed, applies strictly to all debates whatsoever, the publication of them being a breach of privilege; but of late years it has been relaxed, by general acquiescence, in favour

[1] 7th March 1850 (Mr. Campbell and Mr. B. Osborne), 109 Hans. Deb. 3rd Ser. 462. See also 30th March 1846 (Sir J. Graham and Mr. Shaw), 85 Ib. 300.

[2] 140 Hans. Deb. 3rd Ser. 1708.

[3] Sir R. Bethell, Mr. Scott, and Mr. Warren; 149 Hans. Deb. 3rd Ser. 10–14.

[4] 235 Ib. 503. 1192; 236 Ib. 36. 172.

[5] 154 Ib. 985.

[6] Royal Titles Act, May 11th, 1876; 129 Hans. Deb. 3rd Ser. 374. Mr. Speaker Brand's Note-Book.

[7] Controller of the Stationery Office, 1877; 235 Hans. Deb. 3rd Ser. 1703.

[8] In Committee of Supply, Education Vote, 12th June 1856. 142 Hans. Deb. 1354.

[9] 203 Ib. 1613, &c.

of speeches delivered in former sessions.[1] It is also irregular to read extracts from newspapers, letters, or other documents referring to debates in the house in the same session.[2] Indeed, until 1840, the reading of any extracts from a newspaper, whether referring to debates or not, had been restrained as irregular. On the 9th March 1840, the Speaker having called a member to order, who was reading from a newspaper, as part of his speech, Sir Robert Peel said, it would be drawing the rule too tight if members were restrained from reading relevant extracts from newspapers; and after a debate, the member proceeded to read from the newspaper, with the acquiescence of the house.[3] And on the 14th February 1856, when a member was called to order for reading from a newspaper, the Speaker stated that, on a former occasion when he had attempted to enforce this rule, he had been overruled by the house.[4] And again, on the 9th March 1857, in Committee of Supply, the chairman, adverting to the preceding cases, decided that this rule could no longer be enforced.[5]

Reflecting upon votes of the house.

(2.) The objections to the practice of referring to past debates apply, with greater force, to reflections upon votes of the house; for these not only revive discussion upon questions already decided, but are also uncourteous to the house, and irregular in principle, inasmuch as the member is himself included in, and bound by, a vote agreed to by a majority.[6] It is very desirable that this rule should be observed; but its enforcement is a matter of considerable difficulty, as

[1] On the 17th May 1794, Sir W. Young objected to the reading of a speech of Sir R. Walpole: but the Speaker decided it to be regular, drawing a distinction between the speeches of dead and living members. 31 Parl. Hist. 527.

[2] 27th Feb. 1846 (Mr. Ferrand). 84 Hans. Deb. 3rd Ser. 232; also 154 Hans. Deb. 3rd Ser. 1200; 162 Ib. 1885; 168 Ib. 1198; 183 Ib. 826; 191 Ib. 2030; 206 Ib. 1330; 208 Ib. 1604; 241 Ib. 831.

[3] 52 Ib. 1063-1065.

[4] 140 Ib. 764.

[5] 144 Ib. 2106.

[6] 2 Hatsell, 234, *n.* See also 185 Hans. Deb. 3rd Ser. 1122; 186 Ib. 885.

principles are always open to argument, although they may have been affirmed or denied by the house.

Allusions to debates in the other house.

(3.) The rule that allusions to debates in the other house are out of order, is convenient for preventing fruitless arguments between members of two distinct bodies who are unable to reply to each other, and for guarding against recrimination and offensive language, in the absence of the party assailed: but it is mainly founded upon the understanding that the debates of the other house are not known, and that the house can take no notice of them. Thus when, in 1641, Lord Peterborough complained of words spoken concerning him by Mr. Tate, a member of the Commons, "their lordships were of opinion that this house could not take any cognisance of what is spoken or done in the House of Commons, unless it be by themselves, in a parliamentary way, made known to this house."[1] The daily publication of debates in Parliament offers a strong temptation to disregard this rule. The same questions are discussed by persons belonging to the same parties in both houses, and speeches are constantly referred to by members, which this rule would exclude from their notice.[2] The rule has been so frequently enforced, that most members, in both houses, have learned a dexterous mode of evading it, by transparent ambiguities of speech; and although there are few orders more important than this for the conduct of debate, and for observing courtesy between the two houses, none, perhaps, are more generally transgressed. An ingenious

[1] 4 Lords' J. 582.

[2] See Lords' Debates, 3rd April 1845 (Lord Ashburton); Commons' Debates, 4th April 1845 (Lord J. Russell), on the Ashburton Treaty; Commons' Debates (Mr. Ffrench), 21st and 23rd July 1845; and Lords' Debates (Lord Brougham), 22nd and 24th July 1845, on the Irish Great Western Railway Bill; Lords' Debates, 27th June 1848 (Earl Grey); and Commons' Debates, 2nd April 1852 (Mr. Cobden); Lords' and Commons' Debates, 26th Feb. and 1st March 1858 (Sir R. Bethell and Lord Campbell), on the Conspiracy Bill, 139 Hans. Deb. 3rd Ser. 4, 69; and 177 Ib. 1557; 183 Ib. 1098, as examples of the violation of this rule. See also 191 Ib. 1786; 229 Ib. 1630.

orator may break through any rules, in spirit, and yet observe them to the letter.[1]

Allusions to reports or proceedings.

The rule applies to debates only, and not to reports of committees of the other house. On the 9th June 1848, objection was taken that a member was quoting from a report made to the House of Lords, which had not been communicated to the Commons: but the Speaker decided that the member was not out of order.[2] Nor can the rule be extended to the votes or proceedings of either house, as they are recorded and printed by authority.[3]

Queen's name used in debate.

(4.) Treasonable or seditious language, or an irreverent use of her Majesty's name would be rebuked by any subject out of Parliament; and it is only consistent with decency, that no member of the legislature should be permitted openly to use such language, in his place in Parliament. Members have not only been called to order for such offences, but have been reprimanded, or committed to the custody of the serjeant, and even sent to the Tower.[4]

To influence a debate.

The irregular use of the Queen's name to influence a decision of the house is unconstitutional in principle, and inconsistent with the independence of Parliament. Where the Crown has a distinct interest in a measure, there is an authorised mode of communicating her Majesty's recommendation or consent, through one of her ministers:[5] but her Majesty cannot be supposed to have a private opinion, apart from that of her responsible advisers; and any attempt to use her name in debate to influence the judgment of Parliament, would be immediately checked and censured.[6]

[1] See discussions, 29th May 1868; 192 Hans. Deb. 3rd Ser. 1077; 208 Ib. 1682; and Speaker's ruling, 9th June 1876; 231 Ib. 749; 237 Ib. 1262; 242 Ib. 228.

[2] Hans. Deb. 9th June 1848.

[3] Since 1860, the Lords' Minutes have been placed upon the table of the House of Commons, for reference. 159 Hans. Deb. 3rd Ser. 856.

[4] 1 Com. J. 50, 51. 104. 333. 335. 866; 9 Ib. 760; 15 Ib. 70; 18 Ib. 49. 54. 653; 7 Hans. Parl. Hist. 511; D'Ewes, 41. 244; Hans. Deb. 3rd March 1881 (Mr. Dillon); Mr. Speaker Brand's Note-Book.

[5] See Chapter XVII.

[6] 1 Com. J. 697.

On the 12th November 1640, it was moved that some course might be taken for preventing the inconvenience of his Majesty being informed of anything that is in agitation in this house before it is determined.[1] In the remonstrance of the Lords and Commons to Charles I., 16th December 1641, it was declared,

"That it is their ancient and undoubted right and privilege that your majesty ought not to take notice of any matter in agitation or debate in either of the houses of Parliament, but by their information or agreement; and that your majesty ought not to propound any condition, provision, or limitation, to any bill or act in debate or preparation in either house of Parliament, or to manifest or declare your consent or dissent, approbation or dislike, of the same, before it be presented to your majesty in due course of Parliament," &c.[2]

On the 17th December 1783, the Commons resolved,

"That it is now necessary to declare, that to report any opinion or pretended opinion of his majesty, upon any bill or other proceeding depending in either house of Parliament, with a view to influence the votes of the members, is a high crime and misdemeanor, derogatory to the honour of the Crown, a breach of the fundamental privileges of Parliament, and subversive of the constitution of this country."[3]

On the 26th February 1808, in the debate on Mr. Canning's motion for papers relating to Denmark, Mr. Tierney said "the right hon. gentleman had forfeited the good opinion of the country, the house, and, as I believe, of his sovereign." This the Speaker held to be such an introduction of the personal opinion of the sovereign into debate, respecting the conduct of a member of the house, as justified Mr. Tierney's being called to order.[4] On the 19th March 1812, complaints were made, in the House of Lords, of the use of the Prince Regent's name in debate.[5]

Explanations of the rule.

The rule, however, must not be construed so as to exclude a statement of facts, by a minister, in which the Queen's name may be concerned. In the debate on the Foreign Loans Bill, 24th February 1729, Sir R. Walpole stated that

[1] 2 Com. J. 27.
[2] 2 Ib. 344.
[3] 39 Ib. 842.
[4] 10 Hans. Deb. 757; 2 Lord Colchester's Diary, 139.
[5] 22 Hans. Deb. 51 *et seq.*

he was "provoked to declare what he knew, what he had the king's leave to declare, and what would effectually silence the debate." Upon which his statement was called for, and he declared that a subscription of 400,000*l.* was being raised in England for the service of the emperor. When he sat down, Mr. Wortley Montagu complained that the minister had introduced the name of the king to "overbear their debates:" but he replied, that as a privy councillor he was sworn to keep the king's counsel secret, and that he had therefore asked his majesty's permission to state what he knew, but which, without his leave, he could not have divulged; and thus the matter appears to have ended, without any opinion being expressed by the Speaker, or by the house.[1]

On the 9th May 1843, Sir Robert Peel said, "On the part of her Majesty I am authorised to repeat the declaration made by King William," in a speech from the throne, in reference to the legislative union between Great Britain and Ireland. On the 19th, an objection was raised to these expressions: but the Speaker, after noticing the irregularity of adverting to former debates, expressed his own opinion,

> "That there was nothing inconsistent with the practice of the house in using the name of the sovereign in the manner in which the right hon. baronet had used it. It is quite true that it would be highly out of order to use the name of the sovereign in that house, so as to endeavour to influence its decision, or that of any of its members, upon any question under its consideration: but he apprehended that no expression which had fallen from the right hon. gentleman could be supposed to bear such a construction."

And Lord John Russell explained, that "the declaration of the sovereign was made by the right hon. baronet's advice, because any personal act or declaration of the sovereign ought not to be introduced into that place;" to which Sir R. Peel added, "that he had merely confirmed, on the part of her Majesty, by the advice of the government, the declaration made by the former sovereign."[2] On the 2nd May 1876, the

[1] 7 Chandler's Debates, 61. 64.

[2] 69 Hans. Deb. 3rd Ser. 24. 574.

premier, Mr. Disraeli, said he had her Majesty's authority to make a statement on her part: but, as the name of the sovereign could not be introduced in debate, it rested with the house whether he should proceed. The Speaker observed that "if the statement related to matters of fact, and was not made to influence the judgment of the house, he was not prepared to say that, with the indulgence of the house, her Majesty's name might not be introduced." Mr. Disraeli then proceeded to make a statement, on the authority of the Queen, in contradiction to Mr. Lowe, that her Majesty had never made proposals to any minister for a change of the royal titles.[1]

Words against Parliament, or either house.

(5.) It is obviously unbecoming to permit offensive expressions against the character and conduct of Parliament to be used without rebuke; for they are not only a contempt of that high court, but are calculated to degrade the legislature in the estimation of the people. If directed against the other house, and passed over without censure, they would appear to implicate one house in discourtesy to the other; if against the house in which the words are spoken, it would be impossible to overlook the disrespect of one of its own members. Words of this objectionable character are never spoken but in anger; and, when called to order, the member must see the error into which he has been misled, and retract or explain his words, and make a satisfactory apology. Should he fail to satisfy the house in this manner, he will be punished by a reprimand, or by commitment.[2] It is most important that the use of such words should be immediately reproved, in order to avoid complaints and dissension between the two houses.

In 1614, Dr. Richard Neile, Bishop of Lincoln, uttered some words which gave offence to the Commons, and they

[1] 228 Hans. Deb. 3rd Ser. 2037—Mr. Speaker Brand's Note-Book.

[2] 9 Com. J. 147. 760; 10 Ib. 512; 11 Ib. 580. Mr. Duffy's case, 5th May 1853; 108 Com. J. 461.

complained of them in a message to the Lords, to which they received an answer that the bishop

"Had made solemn protestation, upon his salvation, that he had not spoke anything with any evil intention to that house, which he doth with all his heart duly respect and highly esteem, expressing with many tears his sorrow that his words were so misconceived, and strained further than he ever meant, which submissive and ingenuous behaviour of himself had satisfied the Lords; and their lordships assure the Commons that if they had conceived the lord bishop's words to have been spoken, or meant, to cast any aspersion of sedition or undutifulness upon that house, their lordships would forthwith have proceeded to the censuring and punishing thereof with all severity."

Their lordships added, that hereafter no member of their house ought to be called in question, when there is no other ground thereof but public and common fame only.[1] In 1701, a complaint was made, by the Commons, of expressions used by Lord Haversham, at a free conference, and numerous communications ensued, which were terminated by a prorogation.[2] On the 14th December 1641, exception being taken to words used by Lord Pierpoint, he was commanded to withdraw, and committed to the custody of the gentleman usher.[3] On the 20th May 1642, the Lord Herbert of Cherbury, having used offensive words in debate, was commanded to withdraw, and committed to the custody of the gentleman usher: but on the following day was released upon his submission.[4] On the 14th March 1770, exception was taken to certain words used in debate by the Earl of Chatham; and the house resolved, "that nothing had appeared to this house to justify his assertion."[5]

Against a statute.

Disrespectful or abusive mention of a statute would seem to be partly open to the same objections as improper language applied to the Parliament itself; for it imputes discredit to the legislature which passed it, and has a tendency to bring

[1] 2 Lords' J. 713. See also 4 Lords' J. 582. 1 Com. J. 496. 499, &c. 3 Hatsell, 73.

[2] 13 Com. J. 629. 634. 637. 639.

[3] 4 Lords' J. 475.

[4] 5 Ib. 77.

[5] 32 Ib. 476.

the law into contempt. More license, however, is allowed in speaking of a statute, than is consistent with this view of its danger; and, though intemperate language should always be repressed, it must be admitted that the frequent necessity of repealing laws justifies their condemnation in debate; and the severity of the terms in which they are condemned, can only be regarded as an argument for their repeal.

Personal allusions.

(6.) In order to guard against all appearance of personality in debate, it is a rule, in both houses, that no member shall refer to another, by name. In the upper house, every lord is alluded to by the rank he enjoys, as "the noble marquess," or "the right reverend prelate;" and in the Commons, each member is distinguished by the office he holds, by the place he represents, or by other designations, as "the noble lord the secretary for foreign affairs," "the honourable" or "right honourable gentleman the member for York," or "the honourable and learned member who has just sat down."[1] The use of temperate and decorous language is never more desirable than when a member is canvassing the opinions and conduct of his opponents in debate. The warmth of his own feelings is likely to betray him into hasty and unguarded expressions, which the excitement of his adversaries will exaggerate; and he cannot be too careful in restraining himself within those bounds which Parliament has wisely established. The imputation of bad motives, or motives different from those acknowledged; misrepresenting the language of another, or accusing him, in his turn, of misrepresentation; charging him with falsehood or deceit; or contemptuous or insulting language of any kind,—all these are unparliamentary, and call for prompt interference.[2] In one case it was proposed, some days after a

Against members.

[1] Mr. Berkeley was called to order, 20th March 1860, for referring to members by name, as having spoken, in former sessions, against the ballot. 157 Hans. Deb. 3rd Ser. 939.

[2] For examples of unparliamentary expressions, see Debate, 3rd March 1864; 173 Hans. Deb. 3rd Ser. 1406; and cases of Viscount Palmerston and Mr. Layard, 27th April 1855, and of Mr. Gathorne Hardy and Mr. Layard, 7th July 1864 (Vote

debate, to express the regret of the house that a minister had not withdrawn certain imputations upon a member. The motion was not treated as a question of privilege entitled to precedence, nor was it held to relate to specific words used in debate, to which exception ought to have been taken at the time; and the motion merely served as an occasion for further explanations.[1]

In the Lords.

The rules of the House of Lords upon this point are very distinctly laid down in their Standing Orders, 13th June 1626:

"To prevent misunderstanding, and for avoiding of offensive speeches, when matters are debating, either in the house, or at committees, it is for honour sake thought fit, and so ordered, that all personal, sharp, or taxing speeches be forborne; and whosoever answereth another man's speech, shall apply his answer to the matter, without wrong to the person; and as nothing offensive is to be spoken, so nothing is to be ill taken, if the party that speaks it shall presently make a fair exposition, or clear denial of the words that might bear any ill construction; and if any offence be given in that kind, as the house itself will be very sensible thereof, so it will sharply censure the offender, and give the party offended a fit reparation and a full satisfaction."[2]

Words of heat.

On the 10th December 1766, notice was taken of some words that had passed between the Duke of Richmond and the Earl of Chatham; upon which they were required by the house to declare, upon their honour, "that they would not pursue any further resentment."[3]

of Confidence) as to the words "calumnious charges," 137 Hans. Deb. 3rd Ser. 1895; 176 Ib. 1003: also 186 Ib. 173. 422. 441. 884; 187 Ib. 953; 188 Ib. 1895. "Dodge" ruled to be an unparliamentary expression; 193 Ib. 1297; so also "factious opposition," Ib. 1741; and "jockeyed," 198 Ib. 512; and accusing a member of having "deliberately raised a false issue," 205 Ib. 1743; and having "passed a somewhat impertinent censure," 206 Ib. 1685. But not "calumnious," 201 Ib. 1455. See also 211 Ib. 852; 212 Ib. 222. 1653; 213 Ib. 750; 219 Ib. 589; 223 Ib. 1015. Mr. Plimsoll's case, "villains," 22 July 1875; 225 Ib. 1826; 226 Ib. 178; "impertinence," 230 Ib. 863. The last six years have been fruitful in similar examples.

[1] 174 Hans. Deb. 3rd Ser. 306.

[2] Lords' S. O. No. 27. See also 12 Lords' J. 31; Mirror of Parl. 1833, p. 2855.

[3] 31 Lords' J. 448.

The Lords are also prompt in their interference to prevent quarrels in debate between their members,[1] and extend their jurisdiction over them even further, by ordering Lords.

"That if any lord shall conceive himself to have received any affront or injury from any other member, either in the Parliament house, or at any committee, *or in any of the rooms* belonging to the Lords' House of Parliament, he shall appeal to the Lords in Parliament for his reparation; which if he shall not do, but occasion or entertain quarrels, declining the justice of the house, then the lord that shall be found therein delinquent shall undergo the severe censure of the Lords' House of Parliament."[2]

Sometimes the Lords have extended this principle to the prevention of quarrels which have arisen out of the house. On the 6th November 1780, the Lords being informed that the Earl of Pomfret had sent a challenge to the Duke of Grafton, upon a matter unconnected with the debates or proceedings of Parliament, declared the earl "guilty of a high contempt of this house," and committed him to the Tower.[3]

The House of Commons will insist upon all offensive words being withdrawn, and upon an ample apology being made, which shall satisfy both the house and the member to whom offence has been given.[4] If the apology be refused, or if the offended member decline to express his satisfaction, the house takes immediate measures for preventing the quarrel from being pursued further, by committing both the members to the custody of the serjeant: whence they are not released until they have submitted themselves to the house, and given assurance that they will not engage in hostile proceedings.[5] Commons.

[1] 16 Lords' J. 378; Earl Rivers and Earl of Peterborow, 8th Feb. 1698.

[2] Lords' S. O. No. 27.

[3] 36 Lords' J. 191.

[4] 78 Com. J. 224; 96 Ib. 401; 103 Ib. 442, 443; 107 Ib. 143. Sir R. Peel and the O'Donoghue, 1862; 117 Ib. 64; 165 Hans. Deb. 3rd Ser. 617; 167 Ib. 854. Sir R. Peel and Mr. Maguire, 11th May 1866; 183 Ib. 801.

[5] 8 Hans. Deb. N. S. 1091; Lord Althorp and Mr. Sheil, 5th Feb. 1834; 89 Com. J. 9. 11; 91 Ib. 484, 485; 92 Ib. 270; 93 Ib. 657. 660.

In 1770, words of heat having arisen between Mr. Fox and Mr. Wedderburn, the former rose to leave the house, upon which the Speaker ordered the serjeant to close all the doors, so that neither Mr. Fox nor Mr. Wedderburn should go out till they had promised the house that no further notice should be taken of what had happened.[1] If words of heat arise in a committee of the whole house, they are reported by the chairman, and the house interposes its authority to restrain any hostile proceedings.[2]

Challenges and quarrels.

The Commons will also interfere to prevent quarrels between members, arising from personal misunderstanding in a select committee, as in the case of Sir Frederick Trench and Mr. Rigby Wason, on the 10th June 1836. One of those gentlemen, on refusing to assure the house that he would not accept a challenge *sent from abroad*, was placed in custody; and the other, by whom the challenge was expected to be sent, was also ordered to be taken; nor were either of them released until they had given the house satisfactory assurances of their quarrel being at an end.[3]

In such cases, the jurisdiction of the house is also extended to the lobbies. On the 11th April 1877, on the numbers being declared after a division, complaint was made to the house, by Mr. Sullivan, of an offensive expression addressed to him by Dr. Kenealy, in the lobby, during the division just taken. Mr. Speaker observed, that had the expression complained of been used in the house, it would have been his duty to deal with the matter on his own authority; but as the complaint referred to words used in the lobby, he left it to the consideration of the house: and Mr. Speaker called upon Dr. Kenealy to explain his conduct. Dr. Kenealy was heard in his place; and, having admitted that he had used the expression complained of, desired to submit his conduct to the decision of the house; after which he withdrew. It was

[1] MS. Officers and Usages of the House of Commons, 1805, p. 138.

[2] 106 Com. J. 313.

[3] 91 Com. J. 464. 468. 34 Hans. Deb. 3rd Ser. 410. 486.

then resolved, that he be ordered to withdraw the offensive expression, and to apologise to the house for having used it. Dr. Kenealy being called in, Mr. Speaker acquainted him with the resolution of the house, and he withdrew the offensive expression complained of, and apologised to the house for having used it.[1]

The sending a challenge by one member to another, in consequence of words spoken by him in his place in Parliament, is a breach of privilege, and will be dealt with accordingly, unless a full and ample apology be offered to the house.[2] But it does not appear that the Speaker or the house would interfere to prevent a quarrel from being proceeded with, where it had arisen from a private misunderstanding, and not from words spoken in debate, or in any proceedings of the house, or of a committee.[3] In such cases, if any interference should be deemed necessary, information would probably be given to the police. But in 1701, Mr. Mason, a member, having sent a challenge to Mr. Molyneux, a merchant, the house required his assurance that the matter should go no further.[4]

Words taken down.

Whenever any disorderly words have been used by a member in debate, notice should be immediately taken of the words objected to; and if any member desire that they may be taken down, the Speaker or chairman, if it appear to be the pleasure of the house or the committee, will direct the clerk to take them down.[5] Even the Speaker's own words have been, in this way, directed to be taken down.[6] The

[1] 132 Com. J. 144; 233 Hans. Deb. 3rd Ser. 951. Mr. Speaker Brand's Note-Book.

[2] Case of Mr. Roebuck and Mr. Somers, 16th June 1845; 100 Com. J. 589. 81 Hans. Deb. 3rd Ser. 601. In 1798, however, the Speaker did not interfere to prevent the duel between Mr. Pitt and Mr. Tierney: but went himself to Putney, where it was fought. 1 Lord Sidmouth's Life, 204. 206.

[3] Private memorandum, 22nd Feb. 1849. But see case of Mr. Layard and Mr. Harvey Lewis, where offensive language had been used, in the division lobby, concerning a speech delivered at a public meeting, 16th May 1867; 122 Com. J. 221.

[4] 13 Ib. 444.

[5] 2 Hatsell, 269. 272, *n.* 66 Com. J. 391; 68 Ib. 322; 93 Ib. 312, 313. Debate 20th March 1851; 115 Hans. Deb. 3rd Ser. 266. 275.

[6] Feb. 16th, 1770; 1 Cavendish Deb. 463.

Commons have agreed, "that when any member had spoke between, no words which had passed before could be taken notice of, so as to be written down in order to a censure."[1] And on the 9th April 1807, the Speaker decided that the words of Dr. Duigenan could not be taken down, though Lord Howick had immediately risen to order, and had objected to the words used. But another member and the Speaker had spoken to the question of order, before the house expressed a wish to have the words taken down.[2] And again, when objection was taken to words, after a question had been put from the chair, it was ruled to be too late.[3] The same principle would seem to apply, if the member had afterwards been permitted to continue his speech without interruption; and this appears to be the rule in the Lords, where the words are required to be taken down *instanter*.[4] If the words be taken down in a committee of the whole house, they are ordered to be reported, and the house deals with the matter as it may think fit.[5] The naming and suspension of a member, however, have lately proved an effective substitute for the taking down of words.[6]

Citing documents not before the house.

Another rule, or principle of debate, may be here added. A minister of the Crown is not at liberty to read or quote from a despatch or other state paper not before the house, unless he be prepared to lay it upon the table. This restraint is similar to that rule of evidence, in courts of law, which prevents counsel from citing documents which have not been produced in evidence. The principle is so reasonable that it has not been contested; and when the objection has been made in time, it has been generally acquiesced in. It has

[1] 2 Hatsell, 269, *n*. See also 69 Hans. Deb. N. S. 566. 93 Com. J. 307. 312, 313; but see 13 Ib. 123.

[2] 9 Hans. Deb. 326.

[3] 205 Ib. 3rd Ser. 403.

[4] 48 Ib. 321, 17th June 1839 (Beer Bill).

[5] Case of Mr. More, 3rd June 1626, 1 Com. J. 866; of Mr. Shippen, 4th December 1717, 18 Ib. 653; of Mr. Duffy, 5th May 1853, 108 Ib. 461. 466; of Mr. Parnell, 25th July 1877; 132 Com. J. 375. 3rd July 1879; 134 Com. J. 316. 24th July 1882; 270 Hans. Deb. 3rd Ser. 365; 272 Ib. 1561. 1565.

[6] 136 Com. J. 418; Hans. Deb. 1st August 1881; Ib. 20th April 1882.

also been admitted that a document which has been cited, ought to be laid upon the table of the house, if it can be done without injury to the public interests.[1] The same rule, however, cannot be held to apply to private letters or memoranda. On the 18th May 1865, the attorney-general, on being asked by Mr. Ferrand if he would lay upon the table a written statement and a letter to which he had referred, on a previous day, in answering a question relative to the Leeds Bankruptcy Court, replied that he had made a statement to the house upon his own responsibility, and that the documents he had referred to being private, he could not lay them upon the table. Lord R. Cecil contended that the papers, having been cited, should be produced: but the Speaker declared that this rule applied to public documents only.[2] Indeed, it is obvious that as the house deals only with public documents, in its proceedings, it could not thus incidentally require the production of papers which, if moved for separately, would be refused as beyond its jurisdiction. Members not connected with the government have also cited documents in their possession, both public and private,[3] which were not before the house: but though the house is equally unable to form a correct judgment from partial extracts, inconvenient latitude has sometimes been permitted, which it is doubtful whether any rule but that of good taste could have restrained.

[1] See Motion of Mr. Adam, March 4th, 1808, to censure Mr. Canning for having read to the house despatches and parts of despatches, none of which had then been communicated to the house, and some of which the house had determined should not be produced. 10 Hans. Deb. 1st Ser. 898; 2 Lord Colchester's Diary, 141. Mr. Canning and Mr. Tierney, 11th February 1818; 37 Hans. Deb. 338. Debate in Committee of Supply, 17th July 1857 (Sir C. Wood); 146 Hans. Deb. 3rd Ser. 1759. See Debate 23rd May 1862, on the Longford Election, in which Sir Robert Peel referred to information received by the Government without citing documents; and comments made upon this course, and precedents cited. 166 Hans. Deb. 3rd Ser. 2116. Also statement of rule by Viscount Palmerston, 12th May 1863; and 176 Hans. Deb. 3rd Ser. 962; 235 Ib. 935.

[2] 179 Hans. Deb. 3rd Ser. 489.

[3] Debate, 8th Mar. 1855, on naval operations in the Baltic, 137 Hans. Deb. 3rd Ser. 261.

The opinions of the law officers of the Crown, being confidential, are not usually laid before Parliament, nor cited in debate; and their production has frequently been refused: but if a minister deems it expedient that such opinions should be made known, for the information of the house, he is entitled to cite them in debate.[1]

Obstruction.

(7.) The rules of Parliament are designed to afford every legitimate opportunity of discussion, to ensure reasonable delays in the passing of important measures, and to guard the rights of minorities. In the observance of these rules, both houses have displayed a generous regard for the liberty of individual members, and of political parties. Freedom of debate has been respected with rare patience and self-denial. Nowhere have the principles of liberty and toleration been more conspicuously illustrated than within the walls of Parliament.[2] On some memorable occasions, the power of a majority has been withstood by a resolute minority, supported by public opinion.[3] But, of late, these salutary rules have been strained and perverted, in the House of Commons, for purposes of obstruction. It became clear that such a course, if persisted in, would frustrate the power and authority of Parliament, and secure the domination of a small minority, condemned by the deliberate judgment of the house and of the country. That it was unparliamentary and opposed to the principles of orderly government was manifest; and on the 25th July 1877, it was declared by the Speaker, "that any member wilfully and persistently obstructing

[1] Riots at Belfast, 17 Feb. 1865; 177 Hans. Deb. 3rd Ser. 354, 355.

[2] Jeremy Bentham contrasts the liberal spirit of the English parliament with the intolerance of revolutionary France. "In France, the terrible decrees of urgency, the decrees for closing the discussion, may well be remembered with dread; they were formed for the subjugation of the minority,—for the purpose of stifling arguments which were dreaded."—Political Tactics, 2, Works, 361.

[3] On the 12th March 1771, the minority divided the house twenty-three times, in resisting the punishment of the printers of the debates; and Burke said of these proceedings, "Posterity will bless the pertinacity of that day." 2 Cavendish, Deb. 377. 395.

public business, without just and reasonable cause, is guilty of a contempt of the house, and would be liable to such punishment, whether by censure, by suspension from the service of the house, or by commitment, as the house may adjudge."[1]

The house was reluctant either to abridge the general privileges of its members, or to visit with severity the evasion and abuse of its rules: but the matter was gravely considered by a Select Committee in 1878,[2] and at length it was resolved to devise measures for vindicating the authority of Parliament, and repressing a serious political evil.

Suspension of members.

The first step taken was the making of a Standing Order on the 23rd February 1880, for suspending any member named by the Speaker, or chairman of a committee of the whole house, "as disregarding the authority of the chair, or abusing the rules of the house by persistently and wilfully obstructing the business of the house, or otherwise"; and in that year one member was suspended, as disregarding the authority of the chair, in a committee.[3] In the following session several members were suspended under this Standing Order.[4]

The Urgency Resolution, 1881.

But obstruction had now become so formidable, that stronger measures were found necessary; and on the 3rd February 1881, a resolution was agreed to, providing that if a motion be made by a minister of the Crown that the state of public business is urgent, and such minister shall declare that any bill, motion, or other question then before the house is urgent, and that it is of importance to the public interest that the same should be proceeded with without delay, the question shall be put forthwith without debate, amendment, or adjournment, and if determined by a majority of three to one in a house of not less than 300, the powers of the

[1] 132 Com. J. 375.

[2] See Report of Committee on Public Business, 1878.

[3] 135 Com. J. 432.

[4] 136 Ib. 31. 56. 111. 418. 157 Hans. Deb. 3rd Ser. 69–81; and see infra, Chap. XII. (Divisions).

house for the regulation of its business should be vested in the Speaker, for the purpose of proceeding with such bill, motion, or other question.[1] In accordance with this resolution, Mr. Gladstone at once declared the Protection of Person and Property (Ireland) Bill to be urgent; the house resolved that the state of public business was urgent; and the Speaker promptly laid upon the table rules for the regulation of the business of the house while the state of public business was urgent.[2] These rules introduced, for the first time, a provision for closing any debate unduly protracted, and otherwise dealt with the principal abuses of the rules of debate which had been practised as methods of obstruction. Designed, in the words of the Speaker, "to promote the proper consideration of urgent measures, without unduly restricting the freedom of orderly debate," they were found simple and effective; and having facilitated the passing of the Protection of Person and Property (Ireland) Bill, they were again applied, with no less efficacy, to the Peace Preservation (Ireland) Bill.[3]

Meanwhile, the consideration of these urgent measures having unduly delayed the consideration of the estimates, Mr. Gladstone, on the 14th March, declared that certain votes in Committee of Supply were urgent, but failed to secure the requisite majority of three to one in support of his motion for urgency.[4]

By the aid of these rules of urgency, a serious political crisis had been overcome; and their successful operation demonstrated the necessity of revising the ordinary rules of procedure, so as to ensure the orderly and effective despatch of business at times of less special urgency. These revised rules were accordingly submitted to the house at the commencement of the ensuing session; but as they gave rise to

[1] 136 Com. J. 58. 257 Hans. Deb. 3rd Ser. 88–155.

[2] 4th, 9th and 18th Feb., 11th March; 136 Com. J. 78. 83. 123.

[3] 1st March 1881; 136 Com. J. 100.

[4] 136 Ib. 124.

protracted discussions, interrupted by other pressing affairs, little progress had been made with their consideration, when, on the 3rd July, it became necessary to revive the urgency resolution of the 3rd February 1881, in order to expedite the passing of the Prevention of Crime (Ireland) Bill.[1] Several members were also suspended, during this session, for wilful and persistent obstruction, and other offences.[2]

It being now too late to conclude the discussion of the new rules of procedure, within the ordinary limits of a session, both houses adjourned from the 18th August to the 24th October, when their consideration was resumed and completed.[3] Mainly designed, like Mr. Speaker's urgency rules, for imposing restraints upon obstruction, they also introduced many valuable improvements in general procedure, which will be found in their proper places. Here those only which relate specifically to obstruction will be noticed.

The Standing Order of the 28th February 1880 was amended, and agreed to in the following form:—

Order in debate.

"That whenever any member shall have been named by the Speaker, or by the chairman of a committee of the whole house, immediately after the commission of the offence of disregarding the authority of the chair, or of abusing the rules of the house by persistently and wilfully obstructing the business of the house, or otherwise, then, if the offence has been committed by such member in the house, the Speaker shall forthwith put the question, on a motion being made, no amendment, adjournment, or debate being allowed, 'That such member be suspended from the service of the house;' and, if the offence has been committed in a committee of the whole house, the chairman shall, on a motion being made, put the same question in a similar way, and if the motion is carried, shall forthwith suspend the proceedings of the committee and report the circumstance to the house; and the Speaker shall thereupon put the same question, without amendment, adjournment, or debate, as if the offence had been committed in the house itself. If any member be suspended under this order, his suspension on the first occasion shall continue for one week, on the second occasion for a fortnight, and on the third, or any

[1] 137 Com. J. 328.

[2] 137 Ib. 149. 322. 346. 395. 483. 271 Hans. Deb. 3rd Ser. 1127. 1262; 273 Ib. 1280.

[3] See Standing Orders of the House of Commons, Part I. 1882; Rules and Orders relating to Public Business, 1883.

subsequent occasion, for a month: Provided always, that suspension from the service of the house shall not exempt the member so suspended from serving on any committee for the consideration of a private bill to which he may have been appointed before his suspension: Provided also, that not more than one member shall be named at the same time, unless several members, present together, have jointly disregarded the authority of the chair: Provided always, that nothing in this resolution shall be taken to deprive the house of the power of proceeding against any member according to ancient usages."

The periods of suspension under the former order were now extended,—continuing, on the first occasion, for a week, on the second for a fortnight, and on the third, or any subsequent occasion, for a month.[1]

One of the Speaker's urgency rules had provided for the closing of a debate, unduly prolonged, and had been enforced on more than one occasion;[2] and the following Standing Order, after much discussion, was now agreed to:—

Putting the question.

"That when it shall appear to Mr. Speaker, or to the chairman of ways and means in a committee of the whole house, during any debate, that the subject has been adequately discussed, and that it is the evident sense of the house, or of the committee, that the question be now put, he may so inform the house or the committee; and, if a motion be made 'That the question be now put,' Mr. Speaker, or the chairman, shall forthwith put such question; and, if the same be decided in the affirmative, the question under discussion shall be put forthwith: Provided that the question, 'That the question be now put,' shall not be decided in the affirmative, if a division be taken, unless it shall appear to have been supported by more than two hundred members, or unless it shall appear to have been opposed by less than forty members, and supported by more than one hundred members.[3]

Limitations were also placed upon obstructive motions for adjournment and vexatious divisions, and upon the operation of the half-past twelve o'clock rule, which had become a provoking instrument of obstruction.[4] But in agreeing to these rules, the house clearly aimed at the correction and

[1] S. O. XII.
[2] 136 Com. J. 96. 100.
[3] S. O. XIV.
[4] S. O. IX. X. XI. XIV.; and supra, pp. 308, 350; infra, p. 407.

restraint of acknowledged abuses, without interfering with fair debate, or legitimate methods of opposition. A serious attempt has been made to rescue parliamentary government from its threatened paralysis; but it is to be feared that the multiplied opportunities for debate, afforded by the forms of the House, may still be so used as to frustrate the arduous, and ever-increasing, work of legislation.

Rules to be observed by members not speaking.

II. The rules to be observed by members present in the house during a debate are: (1) to keep their places; (2) to enter and leave the house with decorum; (3) not to cross the house irregularly; (4) not to read books, newspapers, or letters; (5) to maintain silence; (6) not to hiss or interrupt.[1]

To keep their places. Lords.

(1.) "The lords in the upper house are to keep their dignity and order in sitting, as much as may be, and are not to move out of their places without just cause, to the hindrance of others that sit near them, and the disorder of the house; but when they must cross the house, they are to make obeisance to the cloth of estate."[2]

Commons.

In the Commons, also, the members should keep their places, and not walk about the house, or stand at the bar, or in the passages. On the 10th February 1698, it was ordered,

"That every member of this house, when he comes into the house, do take his place, and not stand in the passage as he comes in or goes out, or sit or stand in any of the passages to the seats, or in the passage behind the chair, or elsewhere that is not a proper place."[3]

If after a call to "order," members who are standing at the bar or elsewhere do not disperse, the Speaker orders them to take their places; when it becomes the duty of the serjeant-at-arms to clear the gangway, and to enforce the order of the Speaker, by desiring those members who still obstruct the passage immediately to take their places. If they refuse or neglect to comply, or oppose the serjeant in the execution of his duty, he may at once report their names to Mr. Speaker.

[1] Another rule, "that no member do take tobacco," is unworthy of a place in the text. See 11 Com. J. 137.

[2] Lords' S. O. No. 18.

[3] 12 Com. J. 496; 19 Ib. 425.

Entering the house. Lords.

(2.) "Every lord that shall enter the house, is to give and receive salutations from the rest, and not to sit down in his place, unless he hath made obeisance to the cloth of estate."[1]

Commons.

Members of the Commons who enter or leave the house during a debate must be uncovered, and should make an obeisance to the chair while passing to or from their places.[2]

Crossing before members speaking. Lords.

(3.) In the Lords, it has been seen that care should be taken in the manner of crossing the house, and it is especially irregular to pass between the woolsack and any peer who is addressing their lordships, or between the woolsack and the table.

Commons.

In the Commons, members are not to cross between the chair and a member who is speaking,[3] nor between the chair and the table, nor between the chair and the mace, when the mace is taken off the table by the serjeant. When they cross the house, or otherwise leave their places, they should make obeisance to the chair.

(4.) They are not to read books, newspapers, or letters in their places.[4] This rule, however, must now be understood with some limitations; for although it is still irregular to read newspapers, any books and letters may be referred to by members preparing to speak, but ought not to be read for amusement, nor for business unconnected with the debate.

Silence.

(5.) Silence is required to be observed in both houses. In the Lords, it is ordered,

Lords.

"That if any lord have occasion to speak with another lord in this house, while the house is sitting, they are to go together below the bar, or else the Speaker is to stop the business in agitation."[5]

Commons.

In the Commons all members should be silent, or should converse only in a whisper. Whenever the conversation is so loud as to make it difficult to hear the debate, the Speaker exerts his authority to restore silence by repeated cries of "order." On the 5th May 1641, it was resolved,

"That if any man shall whisper or stir out of his place to the dis-

[1] Lords' S. O. No. 17.

[2] See 8 Com. J. 264.

[3] This rule, however, is not observed when a member is speaking from the third, or any higher bench from the floor.

[4] 4 Com. J. 51.

[5] Lords' S. O. No. 22.

turbance of the house at any message or business of importance, Mr. Speaker is ordered to *present his name* to the house, for the house to proceed against him as they shall think fit."[1]

(6.) They are not to disturb a member who is speaking by hissing,[2] exclamations,[3] or other interruption. The following is the declaration of this rule by the House of Commons, 22nd January 1693:— Hissing or interruption.

"To the end that all the debates in this house should be grave and orderly, as becomes so great an assembly, and that all interruptions should be prevented, be it ordered and declared, that no member of this house do presume to make any noise or disturbance whilst any member shall be orderly debating, or whilst any bill, order, or other matter shall be in reading or opening; and in case of such noise or disturbance, that Mr. Speaker do call upon the member, by name, making such disturbance; and that every such person shall incur the displeasure and censure of the house."[4]

This rule is too often disregarded. In the House of Commons, the most disorderly noises are sometimes made, which, from the fulness of the house, and the general uproar maintained when 500 or 600 members are impatiently waiting for a division, it is scarcely possible to repress. On the 19th March 1872, while strangers were excluded, notice was taken of the crowing of cocks, and other disorderly noises proceeding from members, principally behind the chair; and the Speaker condemned them as gross violations of the orders of the house; and could not refrain from expressing the pain with which he had heard them.[5]

Without any such noises, however, there are words of "Hear, hear."

[1] 2 Com. J. 135.

[2] 1 Ib. 473. "Motion against hissing, to the interruption and hindrance of the speech of any man in the house, well approved of." 1604. 1 Com. J. 935. 20th June 1604, "Agreed, for order, that whosoever hisseth or disturbeth any man in his speech shall answer it at the bar, as a breach of order and contempt of the house." 1 Com. J. 243; Mr. Speaker Bromley's Note-book.

[3] 13 Lords' J. 387 (E. of Clarendon and M. of Winchester, 28th November 1678).

[4] 11 Com. J. 66. See also 1 Ib. 152.

[5] 210 Hans. Deb. 3rd Ser. 307; Mr. Speaker Brand's Note-book.

interruption which, if used in moderation, are not unparliamentary: but when frequent and loud, cause serious disorder. The cry of "question" has already been noticed, and its improper use condemned. Another is that of "hear, hear," which has been sanctioned by long parliamentary usage, in both houses. It is generally intended to denote approbation of the sentiments expressed, and in that form, is a flattering encouragement to a member who is speaking; it is not uttered till the end of a sentence, and offers no interruption to the speech. But the same words may be used for very different purposes, and pronounced with various intonations. Instead of implying approbation, they may distinctly express dissent, derision, or contempt; and if exclaimed with a loud voice and before the completion of a sentence, no mode of interruption can be more distracting or offensive to the member who is speaking. Whenever exclamations of this kind are obviously intended to interrupt a speech, the Speaker calls to "order," and, if persisted in, is obliged to name the disorderly members, and leave them to be censured or otherwise dealt with by the house.[1]

On the 6th August 1878, Major O'Gorman having repeatedly interrupted the Secretary of State for War, by loud and disorderly cries of "hear, hear," and having refused to apologise when called to order, was at length named by the Speaker. He was thereupon ordered to withdraw, and to attend in his place on the following day; when he offered his apologies to the Speaker and the house, which were accepted as satisfactory.[2]

Misbehaviour to members in the house.

On the 15th December 1792, Mr. Whitmore having disturbed the debate by a disorderly interruption, was "named" by the Speaker, and directed by the house to withdraw.[3]

[1] 1 Com. J. 483; 2 Ib. 135. See anecdotes of Mr. Speaker Onslow and Sir F. Norton, as to the calling of members by name; 1 Lord Sidmouth's Life, 692; Fox's Speech, 23rd April 1804.

[2] 242 Hans. Deb. 3rd Ser. 1380. 1438; Mr. Speaker Brand's Notebook.

[3] 48 Com. J. 11. 13; 30 Parl. Hist. 113.

On the 8th June 1852, "complaint being made by a member in his place, that Mr. Feargus O'Connor had been guilty of misbehaviour to him; Mr. Speaker informed Mr. O'C., that if he persisted in such conduct, it would be necessary for him to call the particular attention of the house towards him, in order that the house might take such steps as would prevent a repetition of it for the future. Upon which Mr. O'Connor rose in his place, and addressed the house, without expressing his regret for what had occurred. Whereupon Mr. Speaker called upon him *by name;* and Mr. O'Connor then apologised to the house for his misconduct."[1] On the 3rd February 1881, Mr. Dillon, Mr. Parnell, Mr. Finigan, Mr. O'Kelly and Mr. O'Donnell, having persisted in repeated interruptions of Mr. Gladstone, who had been called upon by Mr. Speaker to move a resolution of which he had given notice, and was in possession of the house, were named and suspended;[2] and on the 23rd February 1883, Mr. O'Kelly was named, for a like offence, and suspended for a week, under the recent Standing Order.[3]

Interruptions in committee.

Indecent interruptions of the debate or proceedings, in a committee of the whole house, are regarded in the same light as similar disorders while the house is sitting. On the 27th February 1810, the committee on the expedition to the Scheldt reported that a member had misbehaved himself during the sitting of the committee, making use of profane oaths and disturbing their proceedings. Mr. Fuller, the member complained of, was heard to excuse himself; in doing which he gave great offence by repeating and persisting in his disorderly conduct; upon which Mr. Speaker called upon him *by name*, and he was ordered to withdraw. It was immediately ordered, *nem. con.*, that "for his offensive words and disorderly conduct he be taken into the custody of the serjeant." The offence for which he was ultimately committed, may appear to have been his disorderly conduct

[1] 107 Com. J. 277.
[2] 136 Ib. 55. 258 Hans. Deb. 3rd Ser. 68; see also *infra*, p. 407.
[3] Votes, p. 66.

before the house; but there can be no doubt that if, without giving fresh offence, he had failed in excusing himself for his misconduct in the committee, the house would have inflicted some punishment, either by commitment or reprimand. This member further aggravated his offence by breaking from the serjeant, and returning into the house in a very violent and disorderly manner, whence he was removed by the serjeant and his messengers.[1]

On the 9th June 1852, the house being in committee, Mr. F. O'Connor interrupted the proceedings of the committee by disorderly and offensive conduct towards a member, and the chairman was directed to report the same to the house. On the Speaker resuming the chair, a motion was made that Mr. O'Connor do attend in his place forthwith: but it was represented that on the previous day he had been disorderly and had apologised, and that it was fruitless to deal with him again in the same manner. While his conduct was under discussion, he twice entered the house and approached the chair of Mr. Speaker, and then withdrew. It was thus obvious to the house that he must be dealt with summarily; and it was accordingly ordered, *nem. con.*, that for his disorderly conduct and contempt of this house, he be taken into the custody of the serjeant-at-arms.[2]

Authority of Speaker. Lords.

In the enforcement of all these rules for maintaining order, the Speaker of the House of Lords has no more authority than any other peer, except in so far as his own personal weight, and the dignity of his office, may give effect to his opinions, and secure the concurrence of the house. The result of his imperfect powers is, that a peer who is disorderly is called to order by another peer, perhaps of an opposite party; and that an irregular argument is liable to ensue, in which

[1] 65 Com. J. 134. 136.

[2] 107 Ib. 278. Hans. Deb. 9th June 1852. On the 16th June he was discharged, on the report of a committee (to whom a petition of his sister had been referred), that arrangements had been made for his immediate removal to a lunatic asylum. 107 Com. J. 292. 301.

each speaker imputes disorder to the last, and recrimination takes the place of orderly debate. There is no impartial authority to whom an appeal can be made, and the debate upon a question of order generally ends with satisfaction to neither party, and without any decision upon the matter to which exception had been taken.

Commons.

In so large and active an assembly as the House of Commons, it is absolutely necessary that the Speaker should be invested with authority to repress disorder, and to give effect, promptly and decisively, to the rules and orders of the house. The ultimate authority upon all points is the house itself: but the Speaker is the executive officer, by whom its rules are generally enforced. In ordinary cases, an infringement of the usage or orders of the house is obvious, and is immediately checked by the Speaker: in other cases his attention is directed to a point of order, when he at once gives his decision, and calls upon the member who is at fault, to conform to the rule as explained from the chair. But doubtful cases may arise, upon which the rules of the house are indistinct or obsolete, or do not apply directly to the point at issue; when the Speaker, being left without specific directions, refers the matter to the judgment of the house. On the 27th April 1604, it was "agreed for a rule, that if any doubt arise upon the bill, the Speaker is to explain, but not to sway the house with argument or dispute;"[1] and in all doubtful matters this course is adopted by the Speaker.[2]

Speaker always to be heard.

Whenever the Speaker rises to interpose, in the course of a debate, he is to be heard in silence, and the member who is speaking, or offering to speak, should immediately sit down. It was agreed for a rule on the 21st June 1604, "that when Mr. Speaker desires to speak, he ought to be heard without interruption, if the house be silent and not in dispute:"[3] but this is an imperfect explanation of the practice, for the rising

[1] 1 Com. J. 187.

[2] See Lord Colchester's explanation of the Speaker's duty, in such cases; 30th March 1808. 2 Diary, 141.

[3] 1 Com. J. 244.

of the Speaker is the signal for immediate silence, and for the cessation of all dispute; and members who do not maintain silence, or who attempt to address the Speaker, are called to order by the majority of the house, with loud cries of "order" and "chair." And it may here be observed that the authority of the chair in maintaining order has been much strengthened by the Standing Order of the 22nd November 1882.[1]

Members to withdraw when their conduct is under debate.

It is a rule in both houses, that when the conduct of a member is under consideration, he is to withdraw during the debate. The practice is to permit him to learn the charge against him, and, after being heard in his place, for him to withdraw from the house. The precise time at which he should withdraw is determined by the nature of the charge. When it is founded upon reports, petitions, or other documents, or words spoken and taken down, which sufficiently explain the charge, it is usual to have them read, and for the member to withdraw before any question is proposed; as in the cases of Lord Coningesby, in 1720;[2] of Sir F. Burdett, in 1810;[3] of Sir T. Troubridge, in 1833;[4] of Mr. O'Connell, in 1836;[5] of Mr. S. O'Brien, in 1846;[6] of Mr. Isaac Butt, in 1858;[7] and of Mr. Lever, in 1861.[8] But if the charge be contained in the question itself, the member is heard in his place, and withdraws after the question has been proposed; as in the cases of Mr. Secretary Canning, in 1808;[9] and of Lord Brudenell, in 1836.[10] If the member should neglect or refuse to withdraw, at the proper time, the house would order him to withdraw. Thus, in the Lords, Lord Pierpoint, in 1641,[11] and Lord Herbert of Cherbury, in 1642,[12] were commanded to withdraw; and in the Commons, in 1715, it was ordered upon question and division, "that Sir W. Wyndham

[1] See *supra*, p. 383.
[2] 21 Lords' J. 450.
[3] 65 Com. J. 224.
[4] 88 Ib. 470.
[5] 91 Ib. 42.
[6] 101 Ib. 582.
[7] 113 Ib. 68.
[8] 116 Ib. 377. 381. See also Mr. Plimsoll's case, 1873; 128 Ib. 61.
[9] 63 Ib. 149.
[10] 91 Ib. 319.
[11] 4 Lords' J. 476.
[12] 5 Ib. 77.

do now withdraw."[1] When a member's conduct has not been directly impugned by the form of the question, he has continued in the house and voted.[2]

Petitions complaining of members.

On the 17th May 1849, petitions were presented complaining of the conduct of three members, as railway directors. The members were permitted to explain and defend their conduct, but did not afterwards withdraw. It being contrary to the Standing Orders of the house to make a motion, or to enter upon a debate on the presentation of a petition, unless it complains of some present personal grievance, or relates to a matter of privilege, the conduct of the members could scarcely be regarded as under the consideration of the house at that time, and as soon as the members were heard, the petitions were ordered to lie upon the table, without further debate. One of the members withdrew, but returned almost immediately to his seat.

Members in contempt.

On the 28th April 1846, the house had resolved that Mr. W. S. O'Brien, a member, had been guilty of a contempt: but the debate upon the consequent motion for his commitment was adjourned until a future day: upon which Mr. O'Brien immediately entered the house, and proceeded to his place. Mr. Speaker, however, acquainted him that it would be advisable for him to withdraw, until after the debate concerning him had been concluded.[3] The reason for this intimation was, that the member had been already declared to be in contempt, although his punishment was not yet determined upon. On the 30th, a request was made through a member, that he should be heard in his place: but this was regarded as clearly irregular, and he was not permitted to be heard.[4] But a member not yet adjudged guilty of contempt may return to his place, when the debate is concluded.[5]

[1] 18 Com. J. 49.

[2] Mr. Stansfeld, 17th March 1864; 174 Hans. Deb. 340.

[3] 85 Hans. Deb. 3rd Ser. 1198.

[4] Ib. 1291.

[5] Mr. Parnell, 25th July 1877; Mr. Speaker Brand's Note-book.

Adjournment of debates.

A motion for adjourning the debate may be offered at any period of the discussion; and in the Lords, whether seconded or not, must be disposed of before the debate can proceed. In the Commons, if it be not seconded, it drops like any other motion, and the debate is continued as if no such motion had been made: but if seconded, it must either be withdrawn or negatived, before the debate upon the question can be resumed. The Speaker, however, will not allow a member to move the adjournment, if he have already spoken in the debate, as he has spoken once to the main question: but if the adjournment be moved by any other member, he may then speak to that question.[1] And by Standing Order, 27th November 1882,

Debates on motions for adjournment, &c.

"When a motion is made for the adjournment of a debate, or of the house, during any debate, or that the chairman of a committee do report progress, or do leave the chair, the debate thereupon shall be confined to the matter of such motion; and no member, having moved or seconded any such motion, shall be entitled to move, or second, any similar motion during the same debate."

When a member moves the adjournment of a debate, with a view to speaking upon the main question on a future day, he should confine himself to that formal motion. On the 26th April 1866, Lord Cranborne rose to move the adjournment of the debate on the Representation of the People Bill: but instead of making that motion, in the accustomed manner, without observations, he proceeded to comment upon a speech just delivered. Exception was taken to this course, and doubts were expressed whether he had not forfeited his right to speak on the following day. This objection was not pressed, but there can be no doubt that by speaking before the question of adjournment had been proposed from the chair, he was, in fact, speaking to the main question before the house, and could not claim to speak a second time, to the same question. Unless such a restriction were observed, the prohibition of more than one speech to each question, could

[1] 1st May 1846 (Lord G. Bentinck); 16th May 1851 (Mr. Reynolds).

easily be evaded; and its observance should, therefore, be enforced, as it is usually maintained in practice,[1] and is now specifically directed by the Standing Order just cited.

It has been explained in a previous chapter,[2] in what manner it has been customary to alternate motions for the adjournment of the house, and for the adjournment of the debate; and repeated motions to that effect, in opposition to the general desire of the house, has been a recognised method of obstruction.[3] But debate must now be confined to the matter of such motions;[4] and by a Standing Order of the 27th November 1882,

Debates on motions for adjournment.

"If Mr. Speaker, or the chairman of a committee of the whole house, shall be of opinion that a motion for the adjournment of a debate, or of the house, during any debate, or that the chairman do report progress, or do leave the chair, is an abuse of the rules of the house, he may forthwith put the question thereupon from the chair."

It need scarcely be added that no such motion can be offered, so as to interrupt any member who is addressing the house: but an adjournment of the debate has been agreed upon, for the purpose of enabling a member to continue his speech on another day.[5]

[1] 182 Hans. Deb. 3rd Ser. 2172; 183 Ib. 6.

[2] *Supra*, pp. 301. 350.

[3] See Mr. Speaker's Ev. before Committees on Public Business, 1848, 1854, and Report of Committee on Public Business, 1858.

[4] *Supra*, pp. 350. 394.

[5] 8th March 1809, "Mr. Perceval having spoken for three hours on the charges against the Duke of York, the house loudly called for an adjournment. Mr. Perceval stated that he had more to offer in concluding, and would go on or stop as the house pleased. The adjournment of the debate till the next day passed by acclamation. *N.B.*—The first instance in my time of adjourning in the middle of a speech." Lord Colchester's Diary, ii. 172. 13 Hans. Deb. 1st Ser. 114.

CHAPTER XII.

DIVISIONS. MODE OF DIVIDING IN BOTH HOUSES. PROXIES AND PAIRS. PROTESTS. MEMBERS PERSONALLY INTERESTED.

Members not present, when question put, cannot vote.

In both houses, any member who desires to vote, is required to be present in the house when the question is put. If not within the folding-doors of the house, when the question is finally put from the chair, he is not entitled to vote; and the following precedents will explain the various circumstances under which this rule has been applied.

Precedents.

On the 16th March 1821, Mr. Speaker called the attention of the house to his having caused a member to vote in a division, who was not within the doors of the house when the question was put; and the house resolved, *nem. con.*, "that the said member had no right to vote, and ought not to have been compelled to vote on that occasion."[1] Another case occurred on the 27th February 1824, when, after a division, and before the numbers were reported by the tellers, it was discovered that a member had come into the house after the question was put; he was called to the table, and upon the question being put to him by Mr. Speaker, he declared himself for the "noes;" he was then let out of the house by the serjeant, and his name was not reckoned by the tellers for the "noes," with whom he had voted.[2]

On the 3rd May 1819, after the numbers had been reported by the tellers, notice was taken that several members had

[1] 76 Com. J. 172.

[2] 79 Ib. 106. This case is entered so ambiguously in the Journal, that it might appear as if the member had been let out into the lobby, in order to vote with the "noes," who had gone forth; but such was not the fact, nor would such a proceeding have been consistent with the rules of the house.

come into the house after the question was put. Mr. Speaker desired any members who were not in the house when the question was put, to signify the same; and certain members having stated that they were not in the house, their names were struck off from the "ayes" and from the "noes" respectively; and the numbers so altered were reported by Mr. Speaker to the house.[1]

On the 2nd June 1825, the "noes" on a division were directed to go forth, and certain members refusing to retire from the lobby the other members in the house were desired again to take their places, and the members were called in from the lobby. The Speaker then asked one of the six members who had refused to retire, where he was when the question was put, and he replied that he had been in the lobby; upon which he was informed by Mr. Speaker that he could not be permitted to vote, and the serjeant was ordered to open the outer door of the lobby, that the six members might be enabled to withdraw.[2] On the 14th June 1836, the house was informed by a member who had voted with the majority on a former day, that he was not in the house when the question was put, and had therefore no right to vote on that occasion; and it was resolved that his vote should be disallowed.[3]

On the 5th July 1855, the chairman of the committee on the Tenants Improvements (Ireland) Bill, on reporting progress, stated that on a division in committee, when the numbers were reported at the table by the tellers, his attention had been called to the fact that three members, who had voted in the majority, were in the lobby beyond the folding-doors, at the back of the Speaker's chair, when the question was put, and asked whether they were entitled to vote. The Speaker ruled "that to entitle a member to vote he must have been in the house and within the folding-doors, and must have heard the question put. After the glass has been turned, and

[1] 74 Com. J. 393. [2] 80 Ib. 483. [3] 91 Ib. 475.

before the question has been put, the officers of the house are bound to clear the lobbies of all members; any member not wishing to leave the house or to vote, is at liberty to retire to the rooms beyond the lobby." Mr. Speaker also stated, in reply to a question from the chairman, "that the vote of any member not present when the question is put, may be challenged before the numbers are declared, or after the division is over."[1]

On the 14th February 1856, a member having been in one of the side lobbies when the question was put, refused to vote. On coming to the table he was told by the Speaker "that not having been within the walls of the house, and not having heard the question put, he need not vote, but might withdraw."[2]

These precedents show that at whatever time it may be discovered that members were not present when the question was put, whether during the division, before the numbers are reported, or after they are declared, or even several days after the votes were given, such votes are disallowed. And in the Lords, a similar rule prevails.[3] In order to prevent the accidental absence of members at so critical a time, precautions are taken to secure their attendance, and to prevent their escape between the putting of the question and the division.

Strangers withdraw.

Until recently it was customary, before a division took place in either house, to enforce the entire exclusion of strangers:[4] but in the Commons, since 1853,[5] strangers have only been required to withdraw from below the bar; and in the Lords, since 1857, strangers have not been required to withdraw from the galleries and the space within the rails of the throne.[6] In fact, they withdraw from those parts of the

[1] 110 Com. J. 352.

[2] 111 Ib. 47.

[3] 65 Lords' J. 481 (Local Jurisdiction Bill, 1833).

[4] So recently as 1849, a committee of the Commons reported against any alteration of the practice: Rep. 1849 (498).

[5] Resolutions, 29th July 1853, made Standing Orders 19th July 1854.

[6] Resolutions, 10th March 1857; 27th June 1865; Standing Order 30.

house only in which, if they remained, they would interfere with the division.

Proceedings prior to a division.

In the Commons the withdrawal of strangers formerly occupied a considerable time when many were present, but scarcely a minute when the galleries were not full. This inconvenience was removed by permitting strangers to remain in the gallery, and by providing that so soon as the voices have been taken, the clerk is to turn a two-minute sand-glass, and the doors are to be closed as soon after the lapse of two minutes as the Speaker or chairman shall direct. The Speaker, directly the debate is closed, puts the question, and when the voices have been taken, gives the order that "strangers must withdraw."[1] The clerk then turns the sand-glass, and while the sand is running, the doorkeepers ring a bell which communicates with every part of the building. This "division bell" is heard in the libraries, the refreshment rooms, the waiting rooms, and wherever members are likely to be dispersed; and gives notice that a division is at hand. Those who wish to vote hasten to the house immediately, and two minutes enable them all to reach their places. Directly the sand has run out, if all the members appear to have then entered the house, the Speaker cries "order, order," and immediately the serjeant-at-arms, and the doorkeepers and messengers under his orders, close and lock all the doors leading into the house and the adjoining lobbies, simultaneously. Those members who arrive after the doors are shut, cannot gain admittance, and those who are within the house, must remain there and vote.[2] If any member has not heard the question put, the Speaker will again state it to him.[3] On the 31st March 1848, a member

Members present must vote.

[1] In the Irish Parliament strangers were permitted to be present during a division. See 1 Sir J. Barrington, Personal Sketches, 195.

[2] On the 16th June 1857, a peer remained in one of the division lobbies until after the doors had been locked; and the serjeant was directed to let him out, without making any report. See also 1 Lord Colchester's Diary, 519.

[3] 80 Com. J. 307; 114 Ib. 112.

having been found in the house who had not voted on either side, he was brought to the table, and was informed by Mr. Speaker that he must vote, whereupon the question was stated to him, and he declared that he voted with the ayes.[1] On the 1st July 1856, three members who had been in the house when the question was put, but had not voted, were required to declare themselves, and the Speaker desired their names to be added to the ayes.[2] Again, in 1862, a member who, having heard the question put, had not passed the tellers, declared himself with the ayes, and was added to the numbers in the division.[3] On the 7th March 1866, a member having heard the question put, found the door locked before he reached the left lobby; and on declaring himself with the noes, his name was added to them;[4] and in other similar cases the same rule has frequently been applied, as well in the house as in committee.[5] On the 29th November 1852, however, notice having been taken that certain members had avoided voting on the previous Friday, by withdrawing to one of the rooms at the back of the Speaker's chair, the Speaker stated that in the new house those rooms had always been considered as out of the house, and that members withdrawing into them could not be required to vote.[6] On the 16th July 1880, some members having retired to a room behind the chair, after the outer doors of the house had been locked for a division, the Speaker stated that the room in question was not within the house for the purposes of a division, and that it was only after the question had been put a second time, that members present were bound to vote.[7] Certain members not having passed the tellers, it was

[1] Election Recognizances Bill, 103 Com. J. 406.

[2] 111 Com. J. 313.

[3] 117 Ib. 151.

[4] 121 Ib. 140. See, also, similar cases 4th July 1870; 125 Com. J. 300; 19th June 1874; 129 Ib. 234. 243.

[5] 125 Ib. 300; 203 Hans. Deb. 3rd Ser. 460. 129 Com. J. 234. 243; 130 Ib. 266; 131 Ib. 175.

[6] See also 110 Com. J. 352; 123 Hans. Deb. 3rd Ser. 713; 254 Ib. 730.

[7] 254 Ib. 730.

ruled, that when the numbers have been reported, and not challenged before the report was made, those numbers must be accepted.[1]

Question twice put.

When all the doors are thus closed, the Speaker again puts the question, and the ayes and noes respectively declare themselves. By the Standing Order of the 19th July 1854, the Speaker is obliged to put the question twice, because the sand-glass is not turned until the voices have been taken; and in the meantime, members who were not present when the question was put, gain admittance to the house. None of these could vote unless the question were again put; and it is therefore the practice to put the question a second time after the doors are closed, in order that the whole house, having had notice of a division, may be able to decide upon the question when put by the Speaker: but after the question has been once put, no member is permitted to speak;[2] and the debate cannot, therefore, be re-opened after the turning of the sand-glass.

Divisions on Wednesday.

It has happened, on a Wednesday morning sitting, that the division on a question, which had been put by the Speaker, was necessarily postponed until a future day. At six o'clock the Speaker is bound by the Standing Orders to adjourn the house;[3] and on the 13th May 1846, the voices having been taken, and the house being about to divide at six o'clock, the Speaker adjourned the house: but if the division had commenced before six o'clock, the Speaker would have allowed it to proceed, as by the rules of the house the doors must remain closed until after the numbers have been reported.[4] As no opposed business is now proceeded with after a quarter before six, these difficulties are avoided, sufficient time being thus allowed to conclude a division before the adjournment; and on several occasions

[1] 245 Hans. Deb. 3rd Ser. 919.

[2] See *supra*, pp. 311. 341.

[3] See *supra*, p. 282.

[4] On the 21st March 1877, the numbers were reported after six o'clock; Mr. Speaker Brand's Note-Book.

the doors have been closed just before a quarter to six, and the division has proceeded.

Votes upon an amendment.

A member who has not voted upon an amendment is nevertheless entitled to vote upon the main question, when subsequently put; and for that purpose has a right to be admitted to the house, so soon as the numbers have been declared after the first division. On the 28th May 1845, some members complained that they had been denied admittance to the house, between a division upon an amendment, and another upon the main question. The Speaker stated that they had been improperly excluded, and that proper directions should be given to prevent the recurrence of such an accident.[1] A similar complaint was made on the 13th March 1849, and the Speaker again stated that the doors should have been opened after the first division, for the admission of members.[2] On the 4th June 1866, a complaint was made of obstructions to the return of members who had left the house to avoid a division upon an amendment. On that occasion, however, the doors were open, but the crowd of members going out, after the division, opposed the entrance of other members.[3]

Division in the Lords.

Until 1857, a division was effected in the Lords by the not-contents remaining within the bar, and the contents going below the bar: but in that year their lordships adopted nearly the same arrangements as those which had been in successful operation, for many years, in the Commons. The proceedings, as at present conducted, may be briefly described. When the question has been "entirely put," the lobbies on the right and left of the house are cleared of strangers, and the doors locked. The Lord Speaker appoints two tellers for each party, without respect to their degree.[4] The contents then go into the right lobby, and the not-contents into the left lobby, and on returning

[1] MS. note, 28th May 1845.

[2] Ib. 13th March 1849 (Church Rates division).

[3] 183 Hans. Deb. 3rd Ser. 1916.

[4] Until 1857, the two tellers were required to be of the same degree.

into the house are counted by the tellers, and their names recorded by the clerks. The vote of the lord on the woolsack, or in the chair, is taken first, in the house; and any lord may, on the ground of infirmity, by permission of the house, be told in his seat. The tellers having counted the votes, announce them to the lord on the woolsack, or in the chair. Alphabetical lists of the names are printed with the Lords' Minutes; and similar lists, but arranged according to the rank of the peers on the roll, are also inserted in the Journal.[1] If a peer goes into the wrong lobby, the house will permit him to correct his error, instead of binding him to his vote, according to the practice of the other house. On the 13th May 1862, the Bishop of Winchester having intended to vote with the not-contents, inadvertently went into the wrong lobby, and discovering his mistake after his name had been noted by the division clerks, declined to pass the tellers, who reported the numbers without counting him. On stating to the house that he intended to vote with the not-contents, his vote was added to the numbers on that side, as reported by the tellers.[2] On the 19th May, the same rule was declared for similar cases;[3] and in 1865, the practice was thus defined by Standing Order:—

"If any lord shall have by mistake gone out with the contents or not-contents (as the case may be), having intended to vote on the other side, he shall wait until the other lords in the same lobby shall have passed out, and on presenting himself to the tellers desire that he may not be counted by them, he having entered that lobby by mistake; and the tellers shall thereupon come with such lord to the table, and inform the house of the circumstance, and shall ask the said lord whether he was in the house when the question was put, and if he shall reply in the affirmative, whether he desires to vote content or not-content on such question, and the vote of the said lord as then declared by him shall be taken by the tellers in the house, and recorded by them accordingly."

[1] Resolutions, 10th March 1857. Reports of the Lords' Committee on the Minutes and Journals, 1857. Standing Orders, 16th June 1857, amended 27th June 1865; Lords' S. O. 30.

[2] 166 Hans. Deb. 3rd Ser. 1608.

[3] 94 Lords' J. 230, and Standing Orders, 27th June 1865.

When voices equal in the Lords.

In case of an equality of voices the not-contents have it, and the question is declared to have been resolved in the negative. When this occurs it is always entered in the Journal. "Then, according to the ancient rule of the law,"[1] or "the ancient rule in the like cases, '*semper præsumitur pro negante*,' &c."[2] The effect of this rule is altered when the house is sitting judicially, as the question is then put "for reversing, and not for affirming;" and consequently, if the numbers be equal, the house refuses to reverse the judgment, and an order is made that the judgment of the court below be affirmed.

Law lords.

As a general rule, none but "law lords," *i. e.* peers who have held high judicial offices, and lords of appeal vote in judicial cases, or otherwise interfere with the decisions of the house.

Votes of other peers in judicial cases.

All peers, however, are entitled to vote, if they think fit, and the right has been exercised in some very remarkable cases. In 1685, in the case of Howard *v.* The Duke of Norfolk, a decree of the Lord Keeper Guildford was reversed, after an angry debate, by a house attended by eighteen bishops and sixty-seven temporal peers.[3] In 1689, on Titus Oates' writ of error, the judgment of the court below was affirmed, on a division, by thirty-five peers against twenty-three, in opposition to the unanimous opinion of the nine judges who attended.[4] A bill to annul this judgment was passed by the Commons, but, after much discussion between the houses, ultimately dropped in the Lords.[5] In Reeve *v.* Long, in 1694, the judgment of the court below was reversed by all the lords, without a division.[6] In 1697, the cause of Bertie *v.* Falkland was debated, like any other question, and the lay lords entered protests.[7] The case of Ashby *v.* White, in 1704, having been made a party question, and a subject of

[1] 33 Lords' J. 519.

[2] 14 Ib. 167, 168.

[3] 14 Ib. 50. Select Chancery Cases. 3 Lord Camp. Lives of Chancellors, 485, 486.

[4] Lords' J., 31st May 1689.

[5] 3 Lord Macaulay, Hist. 388.

[6] 16 Lords' J. 446. Sugden, Law of Real Prop., Introduction.

[7] 16 Lords' J. 230. 236. 240. 247.

contest between the two houses, the judgment of the Court of Queen's Bench was reversed, on a division, by fifty against sixteen.[1] In the Douglas peerage case, in 1769, some lay lords took part in the debates and proceedings and entered a protest, but abstained from voting.[2] In Smith *v.* Lord Pomfret, in 1772, lay lords interfered and voted.[3] In Alexander *v.* Montgomery, in 1773, the lay lords voted, and the numbers being equal (four and four), the judgment was affirmed.[4] In 1775, judgment was given in Hill *v.* St. John, in the presence of lay lords, and with their authority, but without any division.[5] In the case of the Bishop of London *v.* Fytche, in 1783, the bishops voted as well as several lay lords, and the judgment was reversed, by nineteen to eighteen.[6] In June 1806, in the case of Lord Hertford's guardianship of Lord Hugh Seymour's daughter, there was a large attendance of lay peers.[7] In the writ of error of The Queen *v.* O'Connell, in 1844, a discussion arose, in which some of the lay lords seemed inclined to exercise their right, but abstained from voting.[8] On the 9th April 1883, in the appeal of Bradlaugh *v.* Clarke, Lord Denman, a lay peer, was present and expressed his opinion in support of the dissentient Lord of Appeal, Lord Blackburn.

Any lords who desire to avoid voting may withdraw to the woolsacks, where they are not strictly within the house, and are not therefore counted in the division.[9]

[1] 17 Lords' J. 369.

[2] 32 Ib. 264. 16 Parl. Hist. 518. 1 Cavendish Deb. 618.

[3] 33 Lords' J. 303. 4 Walpole, Mem. of Geo. III. 285.

[4] 33 Lords' J. 519.

[5] Sugden, Law of Real Prop., Intr. 21.

[6] 36 Lords' J. 687. 2 Brown's Parl. Cases, 211. 5 Lord Campbell, Chancellors, 523.

[7] Lord Minto says, 16th June 1806, "The House of Lords made a very discreditable appearance on this occasion, attending in great numbers, at the solicitation or command of the Prince of Wales."—Life and Letters of Sir Gilbert Elliot, first Earl of Minto, iii. 390.

[8] 11 Clar. & Fin. 155. 421.

[9] On the second reading of Queen Caroline's Degradation Bill, in 1820, Lord Gage enforced an old order, and each peer gave his vote, in his place, *seriatim*. 53 Lords' J. 751. 754. 2 Plumer Ward's Mem. 91.

In the Commons.

The practice in the Commons, until 1836, was to send one party forth into the lobby, the other remaining in the house. Two tellers for each party then counted the numbers and reported them. In 1836, it was thought advisable to adopt some method of recording the names of members who voted, and for this purpose several contrivances were proposed: but by that adopted and now in operation, there are two lobbies, one at each side of the house, and, on a division, the house is entirely cleared; one party being sent into each of the lobbies.

Tellers.

The Speaker, in the first place, directs the ayes to go into the right lobby, and the noes into the left lobby, and then appoints two tellers for each party;[1] of whom one for the ayes and another for the noes are associated, to check each other in the telling.

No division without two tellers.

If two tellers cannot be found for one of the parties, no division is allowed to take place. On the 4th June 1829, a member was appointed one of the tellers for the ayes: but no other member remaining in the house to be a teller for the ayes, the noes, who had gone forth, returned into the house, and Mr. Speaker declared that the noes had it.[2] In another case, 14th August 1835, the ayes were directed to go forth, and a member was appointed a teller: but no member going forth, nor any other member appearing to be a second teller for the ayes, Mr. Speaker declared the noes had it;[3] and several cases, of the same kind, have occurred more recently.[4]

Proposed restrictions upon divisions.

It would, indeed, be unreasonable to allow a division, when, without counting the majority the minority obviously consists of one member only, opposed to the whole house. It has often been suggested that a rule might be established, by which no division should be allowed, unless a certain number of members declared themselves with the minority, besides

[1] A member is bound to act as teller for that party with whom he has declared himself, when appointed by the Speaker; and his refusal would be reported to the house. Private Mem. 7th July 1859.

[2] 84 Com. J. 379.

[3] 90 Com. J. 550.

[4] 97 Ib. 183. 354; 98 Ib. 605. 23rd May 1850; 105 Ib. 364. Votes, 16th June 1863. 127 Com. J. 121. 347; 132 Ib. 61; 137 Ib. 172.

the tellers.[1] And, at length, by Standing Order of the 27th November 1882, it was provided "that, after the house has entered upon the orders of the day or notices of motions, when, after the house has been cleared for a division, upon a motion for the adjournment of a debate, or of the house during any debate, or that the chairman of a committee do report progress, or do leave the chair, the decision of Mr. Speaker, or of the chairman of a committee, that the ayes or noes have it is challenged, Mr. Speaker or the chairman may, after the lapse of two minutes, as indicated by the sand glass, call upon the members challenging it to rise in their places, and, if they be less than twenty in a house of forty members or upwards, he may forthwith declare the determination of the house or of the committee."[2]

Divisions on questions of adjournment.

On the 20th April 1882, on a question for the suspension of a member, he was proposed as a teller for the noes, but Mr. Speaker said that unless another teller could be named, he should declare that the ayes had it.[3] And on the 30th June 1882, a similar case occurred in committee.[4]

When the house proceeds to a division, every member is bound to retire from the house into one of the lobbies. On the 3rd February 1881, it being reported by one of the tellers that he was unable to clear the house, as several members refused to quit their places, the Speaker, having already called the attention of the house to their conduct during a previous division, now cautioned them that if they again refused to withdraw, he should consider that they were

Members to retire into one of the lobbies.

[1] In the American House of Representatives there is a rule very similar to the suggestion contained in the text; viz., "No division and count of the house shall be in order, but upon motion seconded by at least one-fifth of a quorum of the members."—Standing Orders and Rules, No. 4. See also the author's pamphlet on Public Business in Parliament, 1849, 2nd edit., pp. 29, 30, and the second edition of this work, p. 274. This recommendation was also made by the Committee on Public Business, in 1878.

[2] In Mr. Speaker's urgency rules, this check was not confined to adjournments, but extended to all divisions. On the 16th April 1883, this rule was applied in committee. Votes, p. 295.

[3] 268 Hans. Deb. 3rd Ser. 1017.

[4] 271 Ib. 1129.

disregarding the authority of the chair. As they persisted in retaining their seats, the Speaker proceeded to name them, twenty-eight in number, and they were severally suspended from the service of the house during the remainder of that day's sitting. Three other members were added to this number, for refusing to withdraw during a division which immediately followed.[1]

Form of division in the Commons.

When there are two tellers for each party, the division proceeds, and the house is cleared. Two clerks are then stationed near each of the entrances to the house, at desks, on which are lists of the members, in alphabetical order, printed upon large sheets of thick pasteboard, so as to avoid the trouble and delay of turning over pages. While the members are passing into the house again, the clerks place a mark against each of their names; and, at the same time, the tellers count the numbers. Members disabled by infirmity are told in the house.

When both parties have returned into the house, the tellers on either side come up to the table (the tellers for the majority being on the right); and one of the tellers for the majority reports the numbers. The Speaker also declares them, and states the determination of the house. If the two tellers should differ as to the numbers on the side told by them, or if any mistake be discovered, there appears to be no alternative but a second division,[2] unless the tellers agree as to the mistake, when the numbers will be correctly reported by the Speaker.[3] If a mistake is subsequently discovered, it will be

[1] 136 Com. J. 56. 258 Hans. Deb. 3rd Ser. 78—88.

[2] In one case a stranger had been told with the noes. 33 Com. J. 212. On the 30th March 1810, a second division was taken on the Expedition to the Scheldt, 65 Ib. 235; and again on the 26th June 1860, in Committee on the Tenure and Improvement of Land (Ireland) Bill, 115 Com. J. 332. In this case a question was raised privately, whether a member, who had voted with the ayes in the first division, could afterwards vote with the noes: but it was held that as the first division had become null and void, the house could only deal with the member's voice and vote in the last and valid division. In committee on Parliamentary and Municipal Elections Bill, 13th April 1872; 127 Com. J. 140.

[3] Roman Catholic Relief Bill, 8th December 1847; 103 Com. J. 102. 16th June 1860 (in committee); 115 Com. J. 332.

ordered to be corrected in the Journal.[1] On the 28th November 1867, an error in the numbers reported by the tellers in a committee of the whole house, having been discovered before the chairman had left the chair, the chairman ordered the numbers to be corrected accordingly.[2]

Members in the wrong lobby.

The error of most frequent occurrence is that of a member going into the wrong lobby, through inadvertence; and in the Commons it has been the rule, in direct opposition to the practice of the Lords, in such cases, to hold the member bound by the vote he has actually given, without regard to his voice on the question, or his own declared intention. On the 9th April 1856, "one of the tellers for the noes stated that Mr. Wykeham Martin was with the noes, in the left lobby, but had refused to vote with them,"—the fact being that he had gone into that lobby by mistake. As he had heard the question put, he was informed that having gone forth into the left lobby, his vote must be recorded with the noes.[3] On the 10th March 1859, one of the tellers, in committee, having reported that a member had not voted, though he had been in the house when the question was put, the member was directed by the chairman to come to the table, and having declared himself with the ayes, the chairman directed his name to be added to that party.[4] On the 15th March 1859, one of the tellers having reported that a member, not having

[1] On the 19th February 1847, notice was taken that the number of the noes reported by the tellers on a previous day on the Railways (Ireland) Bill did not correspond with the printed lists; and the tellers for the noes being present, stated that the number had been reported by them by mistake. The clerk was ordered to correct the number in the Journal, 102 Com. J. 131. On the 2nd May, 1860, a similar proceeding took place, upon the Aggravated Assaults Act Amendment Bill, 115 Com. J. 216; and again, on the 13th March 1863, 118 Ib. 111; 13th March 1882, 137 Com. J. 98, and on other similar occasions.

[2] 123 Com. J. 16; and 128 Ib. 223.

[3] 111 Com. J. 129. It was afterwards suggested that if he had stated that he had given his *voice* with the ayes, that party might have claimed his vote; and it may be worthy of consideration whether a member, under such circumstances, should not be allowed to declare himself at the table and have his vote recorded, according to his opinion. See practice of the Lords, *supra*, p. 403.

[4] 114 Com. J. 102.

heard the question put, had not voted, the Speaker again stated the question to him, when he declared himself with the ayes, and the Speaker directed his vote to be added accordingly.[1] On the 8th May 1860, notice was taken that a member had been in the division lobby with the noes, and having passed the division clerks, had avoided being counted by the tellers. The member stated that he had gone into the lobby with the noes by mistake: but the Speaker directed his vote to be added to the noes.[2] Similar cases occurred on the 2nd July 1861,[3] on the 6th March 1866,[4] on the 12th August 1878,[5] and on the 2nd May 1882.[6] On the 21st June 1864, Sir Colman O'Loghlen, in committee on the Court of Chancery (Ireland) Bill, went into the wrong lobby; and having stated his case to the Speaker, when the house was resumed, was told that having heard the question put, there was no remedy for his error.[7] Exceptional cases have arisen in which members have voted against their own motions, and the regularity of such a proceeding was determined by the question whether his voice, as well as his vote, had been given with the noes.[8]

Casting voice of the Speaker.

If the numbers should happen to be equal, the Speaker (and in committee the chairman), who otherwise never votes, must give the casting voice. In the performance of this duty, he is at liberty to vote like any other member, according to his conscience, without assigning a reason: but, in order to avoid the least imputation upon his impartiality, it is usual for him, when practicable, to vote in such a manner as not to make the decision of the house final, and to explain his reasons, which are entered in the Journals.

Precedents.

On the 12th May 1796, on the third reading of the Suc-

[1] 114 Com. J. 111.
[2] 115 Ib. 229.
[3] 164 Hans. Deb. 3rd Ser. 210.
[4] 121 Com. J. 136.
[5] 142 Hans. Deb. 3rd Ser. 1814.
[6] 137 Com. J. 172.
[7] 176 Hans. Deb. 3rd Ser. 31. For other similar cases, see 111 Com. J. 129; 119 Ib. 359; 121 Ib. 137.
[8] 18th February 1866; 227 Hans. Deb. 3rd Ser. 473. 25th July 1879; Sir H. Selwyn Ibbetson, in Committee of Supply; Votes, p. 697.

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cession Duty on Real Estates Bill, there having been a majority against "now" reading the bill a third time, and also against reading it that day three months, there was an equality of votes on a third question, that the bill be read a third time to-morrow, when the Speaker gave his casting vote with the ayes, saying "that upon all occasions when the question was for or against giving to any measure a further opportunity of discussion, he should always vote for the further discussion, more especially when it had advanced so far as a third reading; and that when the question turned upon the measure itself,—for instance, that a bill do or do not pass,—he should then vote for or against it, according to his best judgment of its merits, assigning the reasons on which such judgment would be founded."[1] Mr. Pitt, however, abandoned the measure.

On the 24th February 1797, Mr. Speaker Addington gave his casting vote in favour of going into committee on the Quakers Bill, assigning as his reason, that he had prescribed to himself an invariable rule of voting for the further discussion of any measure which the house had previously sanctioned, as in this instance it had, by having voted for the second reading; but that upon any question which was to be governed by its merits, as, for instance, "that this bill do pass," he should always give his vote according to his judgment, and state the grounds of it.[2] On the 8th April 1805, in the proceedings against Lord Melville, prior to his impeachment, the numbers were equal upon the *previous* question, and the Speaker gave his casting vote in favour of the previous question, on the ground that "the original question was *now* fit to be submitted to the judgment of the house."[3]

[1] 1 Lord Colchester's Diary, 57.

[2] 1 Lord Sidmouth's Life, 187. 1 Lord Colchester's Diary, 85.

[3] 60 Com. J. 202. 1 Lord Colchester's Diary, i. and xxii. 548. Mr. Walpole, in his Life of Spencer Perceval, is under some misapprehension concerning this vote. He says, "It seems clear that it was wrong. It is the Speaker's duty, in the case of a tie, to give a vote which shall allow the question to be raised again. The Speaker, therefore, on this ground should have voted for

On the 5th June 1811, on a question for the appointment of a committee to inquire into delays in the Court of Chancery, the Speaker voted with the ayes, it being upon a question "whether or not this house shall exercise its own power of inquiring into the causes of existing grievances."[1] On the 14th June 1821, the Speaker declared himself with the ayes, on a question for reading the amendments made by a committee to a bill a second time, "upon the ground of affording a further opportunity to the house of expressing an opinion upon the bill."[2]

Upon the second reading of a bill, 1st May 1828, the numbers being equal, Mr. Speaker stated, "that as the bill had been entertained by the house, although they were now undecided as to whether it should proceed or not, he considered that he should best discharge his duty by leaving the bill open to further consideration, and therefore gave his vote with the yeas."[3] The Speaker acted upon the same principle on the third reading of a bill, 23rd June 1837;[4] and a similar course has generally been taken at other stages in the progress of bills—often, without stating any reason.[5] On the 10th May 1860, the numbers being equal upon an amendment to a bill, on report, the Speaker stated that as the house was unable to form a judgment upon the propriety of the proposed amendment, he should best perform his duty by leaving the bill in the form in which the committee had reported it to the house.[6] On the 19th June 1861, the numbers being equal on the third reading of the Church Rates Abolition Bill, Mr. Speaker gave his casting vote for reasons

the previous question," which was precisely what he did, and for the very reason assigned by Mr. Walpole.—1 Walpole, Life of Spencer Perceval, 160.

[1] 66 Com. J. 395. 2 Lord Colchester's Diary, 334.

[2] 76 Com. J. 439.

[3] 83 Ib. 292.

[4] Caoutchouc Company Bill. 92 Com. J. 496. In this case the debate upon the next question, "that this bill do pass," was adjourned; and on the 28th June the bill was passed on division, the numbers being—ayes, 58; noes, 23. Ib. 519.

[5] 95 Com. J. 536; 96 Ib. 344; 98 Ib. 163; 102 Ib. 872; 113 Ib. 232.

[6] 115 Ib. 235.

partly determined by the stage of the bill, and partly by the peculiar circumstances connected with the measure itself. He stated that—

"They had now reached the third reading of the bill, and he found that the house hesitated, and was unable to decide whether the law should stand, or should be changed. As far as he was able to collect the opinion of the house from the course of the debate, it appeared to him that a prevailing opinion existed in favour of a settlement of the question, different, in some degree, from that contained in the bill; and he thought he should best discharge his duty by leaving to the future and deliberate judgment of the house to decide what change in the law should be made (if it should be their pleasure to make a change), rather than of taking the responsibility of the change on his single vote: he therefore declared himself with the noes." [1]

On the third reading of the Tests Abolition (Oxford) Bill, 1st July 1864, an adverse amendment having been negatived by a majority of ten, a debate was raised upon the main question that the bill be now read a third time, during which many members came into the house; and upon the division the numbers were equal. Under these circumstances the Speaker said he should afford the house another opportunity of deciding upon the merits of the bill, by declaring himself with the ayes; and the question that the bill do pass, was negatived by a majority of two.[2] On the 24th July 1862, the numbers being equal on a question for disagreeing to a Lords' amendment, the Speaker said he should support the bill, as passed by this house.[3] On the 2nd April 1821, however, the Speaker voted with the noes on the second reading of a bill, and so threw it out, without assigning any reason for his vote.[4] And in some cases, not being the stages of bills, the Speaker has given his casting vote without assigning reasons.[5]

The principle by which the Speaker is usually guided in giving his casting voice,—that of interfering as little as possible with the judgment of the house itself,—has been

[1] 116 Com. J. 282.
[2] 119 Ib. 388.
[3] 168 Hans. Deb. 3rd Ser. 785; Mr. Speaker Denison's Note-Book.
[4] 76 Com. J. 229.
[5] 93 Ib. 587.

carried even further than in the case of bills. On the 26th May 1826, within a few days of the end of the session, a resolution was proposed in reference to the practice of the house in cases of bribery at elections. The previous question was moved, and, on a division, the numbers being equal, Mr. Speaker said, "that it being now his duty to give his vote, and considering the proposed resolution as merely declaratory of what are the powers and what is the duty of the house, and that any inaccuracy in the wording of the resolution might be amended, when in the new Parliament it must be re-voted, he should give his vote with the yeas."[1]

And on the 19th May 1846, on a question for referring a petition, complaining of bribery at Bridport, to a committee of inquiry, the numbers being equal, Mr. Speaker said, "that as the house had no better means of forming a judgment upon the question than the election committee, who had already declined to entertain it, and as it would still be open to any elector of the borough, under the provisions of the Act 5 & 6 Vict. c. 2, to present a petition to the house, praying that a committee, having power to examine upon oath, might be appointed to investigate the subject of bribery and compromise, he therefore declared himself with the noes."[2] On the 25th May 1841, on a motion for an address to the Crown in behalf of political offenders, Mr. Speaker declared himself with the noes, as "the vote, if carried, would interfere with the prerogative of the Crown."[3] On the 6th May 1851, the numbers being equal on a question for the house to resolve itself into committee on the duties on home-made spirits in bond, the Speaker gave his casting vote in favour of the motion.[4] His reasons are not entered in the Journal: but his vote was determined by the principle that the house would have further opportunities of reconsidering its decision, if the motion were carried.

[1] 81 Com. J. 387.
[2] 101 Ib. 731.
[3] 96 Ib. 344.
[4] 106 Ib. 205.

On the 24th July 1867, the numbers being equal upon a proposed resolution relative to Trinity College (Dublin), Mr. Speaker stated "that this was an abstract resolution, which, if agreed to by the house, would not even form the basis of legislation: but undoubtedly the principle involved in it was one of great importance, and, if affirmed by a majority of the house, it would have much force. It should, however, be affirmed by a majority of the house, and not merely by the casting vote of its presiding officer. For these reasons he declared himself with the noes."[1] On the 9th August 1878, the numbers being equal upon a question for the postponement of a bill to that day, and an amendment for postponing it till Tuesday, the Speaker stated "that as in the case of the prior order of the day the house decided upon its postponement till Tuesday," he declared himself for the amendment.[2]

Speakers speaking in committee.

But while in the chair the Speaker is thus restrained, by usage, in the exercise of his independent judgment, in a committee of the whole house he is entitled to speak and vote like any other member. Of late years, however, he has generally abstained from the exercise of his right. This punctilious impartiality was not formerly observed by Speakers. Among the earliest examples are those of Mr. Speaker Glanville, on the 4th May 1640, upon the granting of twelve subsidies to the king;[3] and of Mr. Speaker Lenthall, on the 22nd January 1641, against the "brotherly gift" to the Scottish nation.[4] Sir Fletcher Norton spoke strongly on the influence of the Crown, on the 6th April 1780; and Mr. Speaker Grenville, on the Regency question, on the 16th January 1789.[5] On the 17th December 1790, Mr. Speaker argued, at length, the question of the abatement of an impeachment, by a dissolution of Parliament,

[1] 122 Com. J. 395.
[2] 142 Hans. Deb. 3rd Ser. 1712.
[3] 1 Lord Clarendon, Hist. 242.
[4] D'Ewes Notes on Long Parliament; Harleian MSS. (162), p. 160.
[5] 27 Parl. Hist. 970.

and cited a long list of precedents.[1] On the 4th December 1797, Mr. Speaker Addington addressed the committee on the assessed taxes, from the gallery.[2] The same Speaker also addressed a committee on the union with Ireland, in 1799;[3] and again, 6th May 1800, in the committee upon the Inclosure Bill.[4] In committee on the charges against the Duke of York, 16th February 1809, Mr. Speaker Abbot moved the commitment of Captain Sandon, a witness, for prevarication.[5] Again, on the 1st June 1809, he made a speech in committee on Mr. Curwen's bill for preventing the sale of seats in Parliament;[6] and on the 4th February 1811, in committee on the Lords' resolution for a commission for giving the royal assent to the Regency Bill.[7] Finally he addressed a committee on the Roman Catholic Relief Bill, in 1813, and carried an amendment excluding Catholics from Parliament, which caused the abandonment of the bill.[8] On the 26th March 1821, Mr. Speaker Manners Sutton spoke in committee on the Roman Catholic Disability Bill;[9] and again on the 6th May 1825, in committee on a similar bill;[10] and on the 2nd July 1834, in committee on the bill for admitting dissenters to the universities, he spoke against the principle of the bill.[11] On the 21st April 1856, in committee of supply, the management and patronage of the British Museum by the principal trustees having been called in question, Mr. Speaker Shaw Lefevre spoke in defence of himself and his colleagues, with great applause. And lastly, on the 9th June 1870, Mr. Speaker Denison spoke and voted in committee on

[1] 28 Parl. Hist. 1043.

[2] Lord Colchester's Diary, i. 121.

[3] 12th Feb. 1799; 1 Lord Sidmouth's Life, 219. 225. 1 Lord Colchester's Diary, 175; and see 34 Parl. Hist. 448; 2 Plowden's Hist. of Ireland, 909.

[4] 1 Lord Colchester's Diary, 203.

[5] 12 Hans. Deb. 1st Ser. 743. 2 Lord Colchester's Diary, 166.

[6] 14 Hans. Deb. 1st Ser. 837. 2 Lord Colchester's Diary, 193.

[7] 18 Hans. Deb. 1st Ser. 1107. 2 Lord Colchester's Diary, 315. Plumer Ward's Mem. i. 379.

[8] Lord Colchester's Diary, i. p. xxiii.; Ib. ii. 447.

[9] 4 Hans. Deb. N. S. 1451.

[10] 13 Ib. 434.

[11] 24 Hans. Deb. 3rd Ser. 1092.

the Customs and Inland Revenue Bill, in support of a clause exempting horses kept for husbandry from licence duty, if used in drawing materials for the repair of roads.

Publication of division lists.

After the division, the sheets of pasteboard on which the names of members are marked, are examined by the division clerks, and sent off to the printer, who prints the marked names in their order; and the division lists are delivered on the following morning, together with the Votes and Proceedings of the house. This plan of recording the names of members on a division has been quite successful; they are taken down with great accuracy, and no delay is occasioned by the process.[1]

Divisions in committee.

In committees of the whole house, divisions were formerly taken by the members of each party crossing over to the opposite side of the house: but the same forms are now observed in all divisions, whether in the house or in committee. A division in committee cannot be taken unless there be two tellers for each side, as in the house itself.[2]

Proxies.

In the Lords, not only those peers who are present may vote in a division, but on certain questions, absent peers are entitled, by ancient usage, regulated by several Standing Orders, to vote by proxy. In 1867, however, a Lords' committee recommended that the practice of using proxies should be discontinued; and on the 31st March 1868, the house agreed to the following Standing Order:—

"That the practice of calling for proxies, on a division, shall be discontinued, and that two days' notice be given of any motion for the suspension of this Standing Order."[3]

No attempt has since been made to suspend this order, and the practice, though capable of being revived on any occasion, at the pleasure of the house, may be regarded as in abeyance.

Pairs.

A practice, similar in effect to that of voting by proxy, has

[1] In 1872, the process was somewhat accelerated by allowing a double stream of members to pass the division clerks.

[2] 15th June 1848 (Borough Elections Bill). 23rd May 1850 (Wood used in ship-building), 105 Com. J. 364.

[3] Lords' S. O. 31; 100 Lords' J. 99.

for many years been resorted to in both houses. A system known by the name of "pairs," enables a member to absent himself, and to agree with another member that he also shall be absent at the same time. By this mutual agreement, a vote is neutralised on each side of a question, and the relative numbers in the division are precisely the same as if both members were present. The division of the house into distinct political parties facilitates this arrangement, and members pair with each other, not only upon particular questions, or for one sitting of the house, but for several weeks, or even months at a time. There can be no parliamentary recognition of this practice, although it has never been expressly condemned;[1] and it is therefore conducted privately by individual members, or arranged by the peers or gentlemen who are entrusted by their political parties, with the office of collecting their respective forces on a division.

Protest.

In addition to the power of expressing assent or dissent by a vote, peers may record their opinion, and the grounds of it, by a "protest," which is entered in the Journals, together with the names of all the peers who concur in it.

On the 27th February and 3rd March 1721, it was ordered,

When to be entered.

"That such lords as shall make protestation, or enter their dissents to any votes of this house, as they have a right to do, without asking leave of the house, either with or without their reasons, shall cause their protestation or dissents to be entered into the clerk's book, the next sitting day of this house, before the hour of two o'clock, otherwise the same shall not be entered; and shall sign the same before the rising of the house the same day."[2]

Sometimes leave is given to lords to enter a protest against any vote of the house, some time after the period limited by the Standing Order.[3]

[1] On the 6th March 1743, a motion was made, "that no member of this house do presume to make any agreement with another member to absent themselves from any service of this house, or any committee thereof; and that this house will proceed with the utmost severity against all such members as shall offend therein;" but it was negatived, on division. 24 Com. J. 602.

[2] Lords' S. O. No. 32. As to dissents in judicial cases, see Macqueen, 28, 29.

[3] 101 Lords' J. 257. 480.

When a protest has been drawn up by any peer, other lords may either subscribe it without remark, if they assent to all the reasons assigned in it; or they may signify the particular reasons which have induced them to attach their signatures;[1] but, by the usage of the House of Lords, the privilege of entering a protest is restricted to those lords who were present and voted upon the question to which they desire to express their dissent. But leave is sometimes given to lords to sign the protest of another peer, although they were not present when the question was put.[2] Any protest or reasons, or parts thereof, if considered by the house to be unbecoming, or otherwise irregular, may be ordered to be expunged.[3] Protests or reasons expunged by order of the house, have also been followed by a second protest against the expunging of the first protest or reasons, by which the object of the house has been defeated.[4] On the 10th April 1690, certain reasons having been expunged, the Duke of Somerset desired that, as he had protested for those very reasons, he might have leave to withdraw his name from the protest, which was granted to him, and to any other lords who pleased.[5] On the 24th June 1824, leave was given to the peers who had entered a protest against the Earl Marshal's bill, to withdraw and amend it, as it stated certain facts incorrectly.[6]

Protest expunged.

Protest withdrawn.

In both houses, personal interest affects the right of members to vote, in certain cases. In 1796, a general resolution

Personal interest.

[1] Protests with reasons date from 1641. 2 Lord Clarendon, Hist. Reb. b. 4, p. 407.

[2] 101 Lords' J. 493; 10th Feb. 1823. "The Duke of Somerset had not voted on the question for the address, but had nevertheless protested against it; and upon motion, his protest, he having been present at the debate, though he had not voted, was allowed to stand on the Journal." 55 Lords' J. 492. Lord Colchester's Diary, iii. 273. See 87 Hans. Deb. 3rd Ser. p. 1137; protest against Corn Importation Bill, where certain peers who had not been present, signed the protest.

[3] 16 Lords' J. 655. 757; 17 Ib. 55; 19 Ib. 220. 480, 481; 40 Ib. 49; 43 Ib. 82. See also Mr. Thorold Rogers's interesting collection of Protests of the House of Lords, Preface.

[4] 14 Ib. 459 (8th and 10th April 1690); 2 Burnet's Own Time, 41; 16 Lords' J. 655; 19 Ib. 220; 21 Ib. 695. 710; 22 Ib. 73; 43 Ib. 82.

[5] 14 Ib. 459.

[6] 11 Hans. Deb. N. S. 1482.

Peers.

was proposed in the Lords, "That no peers shall vote who are interested in a question:" but it was not adopted.[1] It is presumed, however, that such a resolution was deemed unnecessary; and that it was held that the personal honour of a peer will prevent him from forwarding his own pecuniary interest by his votes in Parliament. By Standing Order No. 98, lords are "exempted from serving on the committee on any private bill, wherein they shall have any interest."

Commons.

In the Commons, it is a distinct rule, that no member who has a direct pecuniary interest in a question, shall be allowed to vote upon it: but, in order to operate as a disqualification, this interest must be immediate and personal, and not merely of a general or remote character. On the 17th July 1811, the rule was thus explained by Mr. Speaker Abbot: "This interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of his Majesty's subjects, or on a matter of state policy."[2] This opinion was given upon a motion for disallowing the votes of the bank directors upon the Gold Coin Bill, which was afterwards negatived without a division.

Questions of public policy.

No instance is to be found in the Journals in which the vote of a member has been disallowed, upon questions of public policy. On the 1st June 1797, however, Mr. Manning submitted to the Speaker whether he might vote, consistently with the rules of the house, upon the proposition of Mr. Pitt, for granting compensation to the subscribers to the Loyalty Loan, he being himself a subscriber. The Speaker explained generally the rule of the house, and Mr. Manning declined to vote.[3] After the division, the votes of two other members were objected to as being subscribers, but one stated that he had parted with his subscription, and the other that he had determined not to derive any advantage to himself; upon

[1] 40 Lords' J. 640. 650.
[2] 20 Hans. Deb. 1001.
[3] 33 Hans. Parl. Hist. 791.

which questions for disallowing their votes were severally negatived.[1]

On the 3rd June 1824, a division took place on a "Bill for repealing so much of an Act 6 Geo. I., as restrains any other corporations than those in the Act named, and any societies or partnerships, from effecting marine insurances, and lending money on bottomry." An objection was made to the numbers declared by the tellers, that certain members who voted with the ayes were personally interested in the passing of the bill, as being concerned in the Alliance Insurance Company: but it was decided that they were not so interested as to preclude their voting for the repeal of a public act.[2] On the 10th July 1844, on the question for hearing counsel against a bill for suspending certain actions for penalties under the gaming laws, objections were taken to the votes of members who were defendants: but one stated that it was not his intention to take advantage of the provisions of the bill, and plead the same in bar of such action; and the other that he had not been served with any process. Motions for disallowing their votes were, therefore, withdrawn.[3] On the 11th July 1844, the vote of a member upon the second reading of a public bill relating to railways, was objected to upon the ground that he had a direct pecuniary interest as the proprietor of railroad shares: but a motion for disallowing his vote was withdrawn.[4]

Private bills.

The votes of members interested in private bills have frequently been disallowed. In 1800, the votes of three members were disallowed, as having a direct interest in a bill for incorporating a company for the manufacture of flour, wheat and bread.[5] On the 20th May 1825, notice was taken that a member who had voted with the yeas on the

[1] 52 Com. J. 632.
[2] 79 Ib. 455.
[3] 99 Ib. 486.
[4] Ib. 491.
[5] 35 Parl. Hist. 463—465. 1 Walpole, Life of Spencer Perceval, 76—78.

report of the Leith Docks Bill, had a direct pecuniary interest in passing the bill. He was heard in his place; and having allowed that he had a direct pecuniary interest in passing the bill: that on that account he had not voted in the committee on the bill; and that he had voted, in this instance, through inadvertence, his vote was ordered to be disallowed.[1]

In some cases the votes of members who were subscribers to undertakings, proposed to be sanctioned by bills, have been disallowed.[2] But in some cases it has been held that it is not sufficient to be interested in a rival undertaking. On the 22nd February 1825, a member voted against a bill for establishing the London and Westminster Oil Gas Company, and notice was taken that he was a proprietor in the Imperial Gas Light and Coke Company, and thereby had a pecuniary interest in opposing the bill. A motion was made that his vote be disallowed: but after he had been heard in his place, it was withdrawn.[3]

On the 16th June 1846, objection was taken to the vote of a member who had voted with the noes, on the ground that he was a director and shareholder in the Caledonian Railway Company, and had a direct pecuniary interest in the rejection of the Glasgow, Dumfries, and Carlisle Railway Bill. Whereupon he stated that the sole direct interest that he had in the Caledonian Railway was being the holder of twenty shares, to qualify him to be a director in that undertaking; and that he voted against the Glasgow, Dumfries, and Carlisle Railway, conceiving it to be in direct competition with the Caledonian Railway, as decided by the legislature in the last session. A question for disallowing his vote, on the ground of direct pecuniary interest, was negatived.[4]

On the second reading of the Birmingham and Gloucester Railway Bill, 15th May 1845, objection was taken to one of the tellers for the noes, as being a landholder, whose property

[1] 80 Com. J. 443.
[2] Ib. 110; 91 Ib. 271.
[3] 80 Ib. 110.
[4] 101 Ib. 873.

would be injured by the proposed line. A motion for disallowing his vote was withdrawn.[1] On the 15th July 1872, objection was taken to two of the tellers in a division, who had voted against the Birmingham Sewerage Bill, on the ground of personal pecuniary interest, but was not sustained.[2]

If any doubt should be entertained by the house whether a vote should be disallowed or not, the member whose vote is under consideration should withdraw immediately after he has been heard in his place, and before the question is proposed.[3]

In committees.

The principle of the rule which disqualifies an interested member from voting, must always have been intended to apply as well to committees as to the house itself: but it is undeniable that a contrary practice had very generally obtained in committees upon private bills, although it was not brought directly under the notice of the house before 1844. In the case of the Leith Docks Bill, in 1825, noticed above, it may be observed that the member stated he had abstained from voting in the committee on the bill, on account of his pecuniary interest. Some years later, the intention of the house may be clearly collected from the following case: On the 20th March 1843, the chairman of ways and means having stated to the house that he had a personal interest in the Lancaster Lunatic Asylum Bill, the house instructed the committee of selection to refer the bill to the chairman of the Standing Orders Committee, instead of the chairman of ways and means.[4] At length, on the 21st June 1844, the Middle Level Drainage Bill Committee instructed their chairman to report that a member "had received an intimation that he ought not to vote on questions arising thereon, by reason of his interest in the said bill;" and desired the decision of the house upon the following question: "Whether a

[1] 100 Com. J. 436.

[2] 212 Hans. Deb. 3rd Ser. 1135—1137. And see case of London and North Western Railway Bill (Mr. Plunket), 8th May 1883.

[3] 80 Com. J. 110; 91 Ib. 271.

[4] 98 Ib. 129.

member of the House of Commons, having property within the limits of an improvement bill, which property may be affected by the passing of the bill, has such an interest as, in the judgment of the house, disqualifies him as a member of the house and the representative of general local interests, from voting on all questions affecting the preamble or clauses of the said bill." On the 27th June, three different propositions were submitted to the consideration of the house, in answer to the question suggested by the committee, which, after a debate, were all ultimately withdrawn; when the house agreed to an instruction to the committee, "that the rule of this house relating to the vote, upon any question in the house, of a member having an interest in the matter upon which the vote is given, applies likewise to any vote of a member so interested, in a committee." Since that time, committees on opposed private bills have been constituted so as to exclude members locally, or personally, interested; and in committees on unopposed bills, such members are not entitled to vote.[1] And a member of a committee on an opposed private bill, or group of bills, will be discharged from any further attendance, if it be discovered after his appointment that he has a direct pecuniary interest in the bills, or one of them.[2]

Member interested may propose motion or amendment.

But though a member interested is disqualified from voting, he is not restrained, by any existing rule of the house, from proposing a motion or amendment. On the 26th July 1859, Mr. Whalley moved an amendment to a clause added by the Lords to a railway bill, in which he admitted that he was personally interested. In the debate, exception was taken to such an amendment having been proposed by a member having a pecuniary interest: but the Speaker ruled that though it was a well-known rule of the house, that a member under such circumstances could not be permitted to vote, and though the course adopted was certainly most unusual, yet

[1] S. O. Nos. 108—110.

[2] 101 Com. J. 904; 104 Ib. 357; 115 Ib. 218.

there was no rule by which the right of a member to make a motion was restrained, and he had been given to understand that Mr. Whalley did not intend to vote.[1]

Offer of money.

The law of Parliament regarding the acceptance of bribes or pecuniary rewards for parliamentary services, has been explained elsewhere.[2] And Parliament has also guarded against other indirect pecuniary influences.

Counsel before committees, &c.

A member is incapable of practising as counsel before the house, or any committee, not only with a view to prevent pecuniary influence upon his votes, but also because it would be beneath his dignity to plead before a court of which he is himself a constituent part. Nor is it consistent with parliamentary or professional usage for a member to advise, as counsel, upon any private bill, or other proceeding in Parliament.

Parliamentary agency.

It has also been declared contrary to the law and usage of Parliament, for any member to be engaged, either by himself or any partner, in the management of private bills, before this or the other house of Parliament, for pecuniary reward.[3]

Counsel before the Lords.

And, upon the same grounds, it was ordered, on the 6th November 1666,

"That such members of this house as are of the long robe shall not be of counsel on either side, in any bill depending in the Lords' House, before such bill shall come down from the Lords' House to this house."[4]

On the 12th July 1820, Mr. Brougham and Mr. Denman, the queen's attorney and solicitor general, the king's attorney and solicitor general, and Dr. Lushington, were permitted to plead as counsel at the bar of the House of Lords, against and in support of the bill then pending against her Majesty Queen Caroline: but such leave was not to be drawn into a precedent.[5] It was also understood that, if the bill should be

[1] 155 Hans. Deb. 3rd Ser. 459.
[2] See *supra*, p. 102.
[3] 85 Com. J. 107.
[4] 8 Ib. 646.
[5] 75 Ib. 444; 2 Hans. Deb. N. S. 400.

received by the Commons, none of those gentlemen would be permitted to vote upon it.

On the 18th July 1842, leave was given to Mr. Roebuck to plead at the bar of the House of Lords, in support of the Sudbury Disfranchisement Bill, which had already passed the Commons.[1] But on the 4th May 1846, the house declined to permit Mr. Charles Buller to attend as counsel before the House of Lords upon the Bolton Waterworks Bill, which had passed the Commons, and had been sent up to the other house; the Speaker saying, that in Mr. Roebuck's case the bill involved a matter of public policy: but that he knew of no precedent of leave being given to a member to plead before the House of Lords on a private bill.[2]

Appeals and committee of privileges.

It was formerly the custom to give leave to members to plead at the bar of the House of Lords on appeals, the last instance being in 1710,[3] since which time members have been accustomed to plead without leave, in all judicial cases before the House of Lords, and before the committee of privileges.[4]

[1] 97 Com. J. 499.

[2] 101 Ib. 627; 86 Hans. Deb. 3rd Ser. 92; see also 8 Com. J. 322; 9 Ib. 86 (Dean Forest Bill).

[3] 3 Com. J. 88; 10 Ib. 336; 16 Ib. 436.

[4] See 1 Hans. Deb. N. S. 402.

CHAPTER XIII.

COMMITTEES OF THE WHOLE HOUSE: GENERAL RULES OF PROCEEDING: CHAIRMAN: MOTIONS AND DEBATE: HOUSE RESUMED.

A COMMITTEE of the whole house is, in fact, the house itself, presided over by a chairman, instead of by the Speaker. It is appointed in the Lords by an order "that the house be put into a committee," which is followed by an adjournment of the house during pleasure. In the Commons it is appointed by a resolution, "That this house will immediately, or on a future day, resolve itself into a committee of the whole house." When a future day is appointed, the committee stands as an order of the day, which being read, a question is put by the Speaker, "That I do now leave the chair;" and when that is agreed to, the Speaker leaves the chair immediately, the mace is removed from the table, and placed under it, and the committee commences its sitting.

Mode of appointment.

The chair is taken, in the Lords, by the chairman of committees, who is appointed at the commencement of each session, by virtue of the Standing Orders of that house,[1] by which it is ordered that he

Chairman of Lords' committee.

"Do take the chair in all committees of the whole house, and in all committees upon private bills, unless where it shall have been otherwise directed by this house."[2]

"That when the house is in a committee of the whole house, if the chairman of committees, or any lord appointed by the house in his place, shall be absent (unless by leave of the committee), the house be resumed."[3]

In pursuance of these orders, in the absence of the chairman of committees, the committee cannot proceed to business: but the house is resumed, and a chairman is appointed by the

[1] Lords' S. O. No. 2.

[2] Ib. No. 38, and 42 Lords' J. 636.

[3] Ib. No. 39.

house.[1] But another chairman is usually appointed before the house goes into committee, or for the whole day.[2] On the 10th February 1871, it was ordered, that Viscount Eversley be appointed to take the chair in committees of the whole house, in the absence of Lord Redesdale, from illness.[3]

Chairman of committees in the Commons.

In the Commons the chair (at the table) is generally taken by the chairman of the committee of ways and means. If a difference should arise in the committee concerning the election of a chairman, it must be determined by the house itself, and not by the committee. The Speaker resumes the chair at once, and a motion being made, "That A. B. do take the chair of the committee;" the Speaker puts the question, which being agreed to, the mace is again removed from the table, and the committee proceeds to business under the chairman appointed by the house.[4]

On the 2nd February 1810, the Speaker having left the chair for the house to go into committee of ways and means, Mr. W. Smith, addressing himself to Mr. Ley, the clerk, begged to say a few words to the house. The Speaker interposed, and explained that if any difference of opinion arose on the subject of who should be called to the chair, it could not be discussed in the incomplete state in which the house then was. The chancellor of the exchequer then called upon Mr. Lushington to take the chair, and Mr. W. Smith upon Mr. Davies Giddy; whereupon the Speaker immediately returned to the chair, and said that now was the time to propose who should be chairman of the committee.[5] On the 2nd March 1883, Mr. Playfair having resigned the office of chairman of ways and means, Sir Arthur Otway was called to the chair, but Mr. Raikes having risen to address

[1] It was otherwise before the 3rd July 1848, when S. O. No. 38 was amended. See Lords' J. and Debates, 22nd June 1848.

[2] 80 Lords' J. 125. 406; 81 Ib. 233; 88 Ib. 38; 95 Ib. 106.

[3] 103 Ib. 12.

[4] 1 Com. J. 650; 9 Ib. 386; 13 Ib. 794; 21 Ib. 255; 40 Ib. 1126; 65 Ib. 30, &c.; 3 Grey's Debates, 301.

[5] 15 Hans. Deb. 302.

the committee, Mr. Speaker resumed the chair; and upon question, it was ordered that Sir A. Otway do take the chair of the committee.[1]

During prolonged sittings it has been customary for the chairman to withdraw, and to be replaced by another member, without any question.[2] But exception having been taken to this long-established practice, notice was given of the following Standing Order in April 1883, the consideration of which has been delayed:

Temporary chairmen.

"That Mr. Speaker be requested to nominate, in every session, six members to serve as chairmen of committees; and any such member may take the chair of a committee of the whole house, when requested by the chairman of ways and means, or by the chairman for the time being, or in the absence of the chairman of ways and means; or, if occasion shall arise, any other member may be called to the chair: provided, that if any difference shall arise, the question that he do take the chair shall be put forthwith."

Retirement of chairman.

When a chairman of ways and means has retired, during the sitting of Parliament, it has been usual for him to announce his retirement to the house, when observations have been made by the ministerial and opposition leaders.[3]

Conduct of business.

The proceedings in committee are conducted in the same manner as when the house is sitting.[4] In the Lords, a peer addresses himself to their lordships, as at other times: in the Commons, a member addresses the chairman, who performs in committee all the duties which devolve upon the Speaker in the house. He calls upon members as they rise to speak, puts the questions, maintains order, and gives the casting vote, in case of an equality of voices. Indeed, the rules of procedure and debate are generally the same in the house, in committees of the whole house, and in select committees. And the chairman of a committee of the whole house has powers like those of the Speaker in maintaining the authority

[1] Votes, p. 106; Hans. Deb. 2nd March 1883.

[2] 132 Com. J. 395; 137 Ib. 322, &c.

[3] Colonel Wilson Patten, 5th April 1853; 125 Hans. Deb. 3rd Ser. 591. Mr. Dodson, April 8th, 1872; 210 Ib. 892. Mr. Lyon Playfair, 1st March 1883.

[4] Lords' S. O. Nos. 36, 37.

of the chair, in checking irrelevance, obstructive motions and vexatious divisions, and in declaring the evident sense of the committee that a question be now put.[1]

Casting voice of chairman.

On the 28th June 1848, in committee on the Roman Catholic Relief Bill, the numbers in a division were equal, and the chairman gave his casting voice. It was stated, in debate, that no such case was recollected, and doubts were expressed as to the regularity of the proceeding; but a similar case had already arisen in committee on the Highways Bill, on the 25th June 1834;[2] it was clearly consistent with the rules of the house, and has since been followed without question.[3] As regards select committees, the rule had been declared by the house;[4] and there can be no principle at variance with the practice which was adopted on this occasion.[5] In giving his casting voice, the chairman is governed by the same principles as the Speaker. Thus, on the 29th July 1869, the numbers being equal in committee of supply, upon the reduction of a vote, the chairman declared himself with the noes, as the committee would have an opportunity of voting upon any other reduction of the proposed vote.[6]

General functions of committees of the whole house.

The ordinary function of a committee of the whole house is deliberation, and not inquiry. All matters concerning religion, trade, the imposition of taxes, or the grant of public money, are required to be considered in committee, as a preliminary to legislation; and any other questions which, in the opinion of the house, may be more fitly discussed in committee, are dealt with in that manner.[7] The provisions of every public bill are also considered in a committee of the whole house.

[1] Some of these powers, however, are confined to the chairman of ways and means. See Chap. XI. (Rules of Debate).

[2] 89 Com. J. 430.

[3] 3rd Aug. 1859; 114 Com. J. 333. 21st May 1860; 115 Ib. 256. 7th Aug. 1876; 131 Com. J. 398. Rules and Orders, No. 203.

[4] 91 Com. J. 214; and see *infra*, p. 461.

[5] See Hans. Deb. 28th June 1848.

[6] 198 Hans. Deb. 3rd Ser. 950.

[7] Education, 1856; Government of India, 1858.

But important inquiries have been entrusted to such committees; as, for example, in 1744, the cause of the miscarriage of the fleet before Toulon;[1] in 1782, the want of success of the naval forces, during the American war;[2] in 1809, the conduct of the Duke of York;[3] in 1810, the failure of the expedition to the Scheldt;[4] and, in 1808 and 1812, the operation of the Orders in Council.[5] In conducting such inquiries, committees of the whole house have examined witnesses at the bar. But however imposing such a tribunal may be, it is obviously ill-adapted to close and consecutive examinations, while the time occupied by its inquiries is a serious impediment to the general business of the session. In 1790, committees of the whole house on the African slave trade were assisted in their inquiries by select committees appointed to take the examination of witnesses, and report the minutes of evidence to the house.[6] And of late years no such inquiries have been referred to committees of the whole house, while the investigation of matters of equal importance has been more satisfactorily entrusted to secret and select committees.[7]

Matters committed.

A committee can only consider those matters which have been committed to them by the house. If it be desirable that other matters should also be considered, an instruction is given by the house, to empower the committee to entertain them.[8] An instruction should always be moved as a distinct question, after the order of the day has been read; and not as an amendment to the question for the Speaker leaving the chair. The latter form has occasionally been resorted to,[9] but

[1] 24 Com. J. 773.

[2] 38 Ib. 644.

[3] 64 Ib. 15.

[4] 65 Ib. 14.

[5] 63 Ib. 199; 67 Ib. 333.

[6] 45 Ib. 11; 46 Ib. 149.

[7] War in the Carnatic, 1781; 58 Com. J. 430. 435. Victualling the Navy, 1782; 58 Ib. 871. Naval Inquiry, 1805; 60 Ib. 214. 413. Army before Sebastopol, 1855; 110 Ib. 36; and see debate on its appointment; 136 Hans. Deb. 3rd Ser. 979. 1121.

[8] See 156 Hans. Deb. 3rd Ser. 1720 (French Treaty in Committee on Customs Act).

[9] 75 Com. J. 431; 76 Ib. 137, 138; 78 Ib. 107 (Bills); 80 Ib. 111; 88 Ib. 163; 113 Ib. 207; 150 Hans. Deb. 3rd Ser. 1503; 124 Com. J. 341.

is an inconvenient mode of proceeding, unless its object be to prevent the sitting of the committee; as the amendment, if agreed to, supersedes the question for the Speaker leaving the chair.

Instructions and amendments on going into committee.

All motions for instructions, unless founded upon resolutions of a committee of the whole house, and amendments to the question for Mr. Speaker leaving the chair [1] (except in the case of committees of supply and ways and means), are moved before the first sitting of the committee. By Standing Order, 25th June 1852,

"When a bill or other matter (except supply or ways and means) has been partly considered in committee, and the chairman has been directed to report progress, and ask leave to sit again, and the house shall have ordered that the committee shall sit again on a particular day, the Speaker shall, when the order for the committee has been read, forthwith leave the chair, without putting any question, and the house shall thereupon resolve itself into such committee."

When there are several amendments.

When there are several amendments to be proposed to the question that the Speaker "do now leave the chair," if the first amendment be negatived, by the house affirming that the words proposed to be left out shall stand part of the question, no other amendment can be offered: but if the amendment be carried, and it be nevertheless desired to proceed with the order of the day, it is necessary to move that this house will immediately resolve itself into a committee of the whole house (a question which, under other circumstances, is omitted); when a second question for the Speaker to leave the chair being proposed, another amendment may then be offered.[2] But this expedient is practically confined to the committee of supply.

[1] See also Chapter XVIII. on BILLS.

[2] Committee of Supply; (Amendment relating to assistant surgeons, Navy), 8th April 1850; 105 Com. J. 198. (Amendment relative to Billeting Soldiers), 7th April 1856; 111 Ib. 124. Forms of Prayer, 13th July 1858; 113 Ib. 306; 115 Ib. 454. Flogging in the army, &c., 15th March 1867; 122 Com. J. 106; Recruits, 16th May 1867; Ib. 219; 133 Ib. 266. And see Chapter XXI. on SUPPLY, *infra*, p. 616.

Resolutions to be proposed in committee not to be discussed in the house.

When notice has been given of resolutions intended to be proposed in committee, it is irregular to anticipate the discussion of them on the question that the Speaker do now leave the chair, as the house can have no cognizance of them, until they have been reported by the committee.[1] But when an amendment is proposed, affirming principles adverse to the intended resolutions, the sound principle of this rule cannot be observed.[2]

Motion not seconded in committee.

It is an established rule that a motion in committee need not be seconded, the propriety of which has sometimes been questioned. It derived confirmation from the former practice of appointing one teller only for each side, on a division in committee; and, although two tellers are now appointed, without whom no division in the lobbies is allowed to proceed, a question is still put from the chair on the motion of one member.

Previous question.

A motion for the previous question is not admitted in committee. The principle of this rule is not perhaps very clear:[3] but such a question is less applicable to the proceedings of a committee. A subject is forced upon the attention of the house, at the will of an individual member: but in committee the subject has already been appointed for consideration by the house, and no question can be proposed unless it be within the order of reference. Motions, however, having the same practical effect as the previous question, have sometimes been allowed in committees on bills;[4] and a motion that the chairman do now leave the chair, offered before any resolution has been agreed upon, and with a view to anticipate and avert such resolution, has precisely the same effect as the previous question.[5]

Question of sums and dates.

On the 3rd November 1675, it was declared to be an

[1] So ruled (privately) by the Speaker in 1856, in reference to the proposed resolutions upon education.

[2] See Mr. Cobden's notice of amendment upon this same committee.

[3] Hatsell did not know the reason of the rule, and thought it inconvenient, ii. 116.

[4] See Chapter XVIII. on Bills.

[5] Mr. Henley's motion in Committee on Education, 10th April 1856; 111 Com. J. 134.

ancient order of the house, "that when there comes a question between the greater and lesser sum, or the longer or shorter time, the least sum and longest time ought first to be put to the question."[1] This rule has more immediate reference to the committees of supply, and ways and means (where, however, it has been nearly superseded by later regulations): but is occasionally observed in other committees, in cases to which the rule is applicable.[2]

Resolution cannot be postponed.

A resolution proposed in a committee of the whole house cannot be *postponed:* it is a question before the committee which must be withdrawn, negatived, amended or agreed to: but, like a question proposed in the house itself, cannot be otherwise disposed of.[3]

Amendments to questions in committee.

When a resolution is proposed in a committee, every amendment may be moved, which might be moved to such a resolution, if proposed in the house itself.[4] Thus, in committee on the government of Canada, on the 14th April 1837, an amendment was moved to leave out all the words after "that," in a resolution, in order to add other words;[5] and again, on the 3rd May 1858, a similar amendment was moved in committee on the government of India.[6] Such a proceeding, however, would not be admissible in considering the clause of a bill. In committee, amendments are proposed to the "proposed resolution," and not to the "question," as in the proceedings of the house.[7]

Royal message read.

Where a message from the Crown has been referred to a committee of the whole house, the proceedings are opened by the reading of such message by the chairman.[8]

Members may speak more than once.

The main difference between the proceedings of a committee and those of the house is, that in the former a member

[1] 9 Com. J. 367.

[2] See Chapter XXI. on SUPPLY.

[3] Government of India, 30th April 1858; 149 Hans. Deb. 3rd Ser. 2066.

[4] For examples of proceedings upon amendments to resolutions, see 108 Com. J. 190. 193. 198; 109 Ib. 254; 113 Ib. 148. 159, &c.

[5] 92 Com. J. 264.

[6] 113 Ib. 148.

[7] This variation of practice appears to have been introduced in 1852; 108 Ib. 187, 188.

[8] 112 Com. J. 170; 116 Ib. 189, &c.

is entitled to speak more than once, in order that the details of a question or bill may have the most minute examination; or, as it is expressed in the Standing Orders of the Lords, "to have more freedom of speech, and that arguments may be used *pro et contra*."[1] These facilities for speaking are too often abused, so as to protract the debates: but are otherwise calculated, in ordinary cases, to discourage long speeches, and to introduce a more free and conversational mode of debating. When a member may not speak more than once, he cannot omit any argument that he is prepared to offer, as he will not have another opportunity of urging it: but when he is at liberty to speak again, he may confine himself to one point at a time. It cannot, however, be denied that an unrestricted right of debate offers special opportunities for delay and obstruction.

To speak standing.

Members must speak standing and uncovered, as when the house is sitting,[2] although it appears that, in earlier times, they were permitted to speak either sitting or standing. On the 7th November 1601, in a committee on the subsidy or supply, Sir Walter Raleigh was interrupted by Sir E. Hobby, who said, "We cannot hear you; speak out; you should speak standing, that so the house might the better hear you." To this Raleigh replied, "that being a committee, he might either speak sitting or standing." Mr. Secretary Cecil rose next, and said, "Because it is an argument of more reverence, I chuse to speak standing."[3]

House resumed.

It was ordered and declared by the Lords, 10th June 1714,

"That when the house shall be put into a committee of the whole house, the house be not resumed without the unanimous consent of the committee, unless upon a question put by the lord who shall be in the chair of such committee."[4]

Chairman leaves the chair.

In the Commons, if any doubt should arise as to a point of order or other proceeding, which the committee cannot agree upon, or which may appear beyond their province to

Commons.

[1] Lords' S. O. No. 36.
[2] 248 Hans. Deb. 3rd Ser. 406.
[3] 1 Hans. Parl. Hist. 916.
[4] Lords' S. O. No. 40.

decide, the chairman should be directed to report progress, and ask leave to sit again. Thus, on the 2nd March 1836, a debate having concluded in committee, the chairman stated, that before he put the question he wished to have the opinion of the committee as to the manner in which the committee should be divided, in case of a division; and it being the opinion of the committee, that this matter ought to be decided by the house, the chairman left the chair; and Mr. Speaker having resumed the chair, the chairman reported that a point of order had arisen in the committee, with respect to the manner in which the committee should be divided, upon which the committee wished to be instructed by the house. The house proceeded to consider this point, and Mr. Speaker having been requested to give his opinion, stated it to the house; after which the house again resolved itself into the committee, the question was immediately put, and the committee divided in the manner pointed out by the Speaker.[1] In the same manner, on the 6th May 1853, a question of order having arisen upon a member's claim to speak, the chairman reported progress, and the Speaker settled the point of order.[2] But unless the committee require directions from the house, the regularity of its proceedings cannot afterwards be questioned. On the 16th May 1878, a member, having contested a ruling of the chairman, moved to report progress, in order to take the direction of the Speaker; but it was explained in debate that there was no appeal to the Speaker, unless the committee desired the authority and orders of the house.[3] There is, indeed, no ground whatever for assuming that members may appeal from the chairman to the Speaker.[4] Neither is it regular to discuss, in committee, the conduct of the Speaker or the proceedings of the house.

[1] 91 Com. J. 104.

[2] 126 Hans. Deb. 3rd Ser. 1240; and again 5th July 1855; 110 Com. J. 352.

[3] Hans. Deb. 16th May 1878.

[4] 21st Feb. 1860; 156 Hans. Deb. 3rd Ser. 1474. See also 170 Ib. 109; 176 Ib. 31.

[5] 248 Ib. 61.

Speaker resumes the chair in certain cases

If any public business should arise in which the house is concerned, the Speaker resumes the chair at once, without any report from the committee; as if the usher of the black rod should summon the house to attend her Majesty or the lords commissioners in the House of Peers,[1] or if the time be come for holding a conference with the Lords.[2]

So, also, if any sudden disorder should occur[3] by which the honour and dignity of the house are affected, the urgency of such a circumstance would justify the Speaker in resuming the chair immediately, without awaiting the ordinary forms. On the 10th May 1675, a serious disturbance arose in a grand committee, in which bloodshed was threatened; when it is related that "the Speaker, very opportunely and prudently rising from his seat near the bar, in a resolute and slow pace, made his three respects through the crowd, and took the chair." The mace having been forcibly laid upon the table, all the disorder ceased, and the gentlemen went to their places. The Speaker being sat, spoke to this purpose, "That to bring the house into order again, he took the chair, though not according to order." No other entry appears in the Journal than that "Mr. Speaker resumed the chair:" but the same report adds, that though "some gentlemen excepted against his coming into the chair, the doing it was generally approved, as the only expedient to suppress the disorder."[4] The Speaker certainly acted with judgment on that occasion, and it appears from a more recent case, that he was clearly in order.

On the 27th February 1810, a member who, for disorderly conduct, had been ordered into custody, returned into the house, during the sitting of a committee, in a very violent and disorderly manner; upon which Mr. Speaker resumed the chair, and ordered the serjeant to do his duty. When the member had been removed by the serjeant, the house again resolved itself into the committee.[5] In less pressing

[1] 126 Com. J. 433. [2] 67 Ib. 431. [3] 1 Ib. 837.
[4] 3 Grey's Deb. 129. [5] 65 Com. J. 134.

cases of disorder, it has been usual for the committee to report progress; when the chairman reports the circumstances to the house.[1] On the 6th March 1815, while the house was in committee on the Corn Bill, tumultuous proceedings took place outside; and Mr. Lambton having complained that the house was surrounded by a military force, the Speaker was sent for, and the house was resumed.[2] The house has also been resumed on account of words of heat or disputes between members;[3] or when words have been taken down in order to be reported to the house.[4] On the 8th March 1881, a member having been named by the chairman as disregarding the authority of the chair, and suspended accordingly by the committee, the chairman left the chair, in order to report the resolution to the house.[5] On the 30th June 1882, the chairman having named several members as being guilty of wilfully and persistently obstructing the business of the house, and having reported the resolution of the committee that they be suspended, which was repeated by the house, further reported that a member, sitting in his place, had insulted him. The conduct of the member was then ordered to be considered on another day, and the house again resolved itself into committee.[6]

Forty members required.

A committee of the whole house, in the Commons, like the house itself, cannot proceed with business unless forty members be present: but it has no power of adjournment. When notice, therefore, is taken that forty members are not present, the chairman counts the committee, and if less than that number be present, he leaves the chair; and Mr. Speaker resumes the chair, and counts the house. If forty members

[1] 3rd July 1851 (The O'Gorman Mahon), 106 Com. J. 333; 9th June 1852 (Mr. F. O'Connor), 107 Ib. 278; 30th June and 1st July 1882 (suspension of members); 137 Ib. 323, 324.

[2] 70 Com. J. 143; 2 Lord Colchester's Diary, 531.

[3] 10 Com. J. 806; 11 Ib. 480; 43 Ib. 467.

[4] 1 Ib. 866; 18 Ib. 653; 106 Ib. 313. Mr. Duffy, 5th May 1853; 108 Ib. 461. Mr. Parnell, 25th July 1877; 132 Ib. 375.

[5] 136 Com. J. 111.

[6] 137 Ib. 323.

be then present, the house again resolves itself into the committee:[1] but if not, the Speaker adjourns the house, without a question first put, provided it be after four o'clock.[2] If, however, it be before four o'clock, the Speaker continues sitting until forty members have come into the house, or until four o'clock, when he adjourns the house. So, also, if it appear on a division in committee, that forty members are not present, the chairman leaves the chair, and the Speaker counts the house in the same manner.[3]

Cannot adjourn.

A committee of the whole house has no power either to adjourn its own sittings, or to adjourn a debate to a future sitting: but if a debate be not concluded, or if all the matters referred be not considered, in the Lords, the house is resumed, and the chairman moves, "that the house be again put into committee" on a future day; and in the Commons, the chairman is directed to "report progress, and ask leave to sit again." If the committee has agreed to certain resolutions, but is unable to conclude the discussion of other resolutions, it is customary to direct the chairman to report the former, and to report progress upon the latter.[4] So entirely is the principle of adjourning debates in committees of the whole house ignored, that when resolutions have been proposed, and progress reported before they were agreed to, resolutions upon other distinct matters have been proposed, and agreed to, at ensuing sittings of the committee, and the resolutions first proposed taken up again on a more distant day. Thus, on the 17th February 1851, in committee of ways and means, a resolution for the continuance of the income tax was proposed, and progress reported. On the 18th March, a

Lords.

Commons.

[1] 8th July 1845; 100 Com. J. 701.

[2] 91 Com. J. 659; 121 Ib. 272. In December 1648, so many members were in prison that sometimes there were not enough to make a house, and the Speaker was "obliged to send to the guards to bring in some of their prisoners to make up the number of 40; and when the jobb was done, to receive them again into custody." Carte's Hist. iv. 601.

[3] 85 Com. J. 60, &c.

[4] Customs and Corn Importation, 1846; 101 Com. J. 280, 281. Committee of Ways and Means (Income Tax), 1853; 108 Ib. 431. Customs, 1854; 109 Ib. 470. Supply, 5th Aug. 1867; 122 Ib. 429.

resolution was agreed to for paying 8,000,000*l.* out of the consolidated fund; and on the 4th April, the resolution for the continuance of the income tax was again proposed, and agreed to.[1] And again, on the 28th April 1853, a resolution was proposed upon the income tax, and progress reported. The committee sat again the same day, when, instead of resuming the discussion upon that resolution, another resolution was proposed upon exchequer bills;[2] and on the 29th April, the resolution upon the income tax was again proposed.[3] For this reason no member can claim to speak first on the renewal of a debate in committee, on the ground that he was in possession of the committee, when the chairman had reported progress.[4]

Motions to report progress, &c.

It is the practice for members who desire an adjournment, to move that the "chairman do report progress," in order to put an end to the proceedings of the committee on that day,—this motion, in committee being analogous to that frequently made at other times, for adjourning the debate. A motion "That the chairman do now leave the chair," when carried, supersedes the business of a committee, as an adjournment of the house supersedes a question; and when the Speaker resumes the chair, no report whatever is made from the committee.[5] But no such motion can be interposed while any member is speaking. On the 6th August 1855, in committee on the Crime and Outrage (Ireland) Bill, while the question for reporting progress was under discussion, notice was taken that forty members were not present, and the chairman having counted the committee, left the chair. On the following day the committee was revived.[6]

A motion to report progress having been negatived, cannot be repeated during the pendency of the same question, being

[1] 106 Com. J. 57. 104. 145.

[2] 108 Ib. 442.

[3] Ib. 446.

[4] So ruled by Mr. Speaker, 6th May 1853 (Mr. Duffy); and again by the chairman, 7th June 1858 (Mr. Roebuck).

[5] 86 Com. J. 403; 89 Ib. 381. 468; 90 Ib. 497. 561; 117 Ib. 177.

[6] 110 Ib. 449.

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subject to the same rule as that observed in the house itself, which will not admit of a motion for the adjournment of the debate to be repeated, without some intermediate proceeding. It has, therefore, been customary to alternate the motion for reporting progress with the motion "that the chairman do now leave the chair."[1] On the 7th June 1858, in committee on the government of India, a question for reporting progress having been negatived, the committee, some time afterwards, were prepared to assent to such a motion: but, in order to adhere to the rule, the chairman put the question upon a formal part of an amendment which had been proposed, before he proceeded to put the question for reporting progress.[2] In some cases committees have reported that they had not made progress.[3]

By Standing Order of the 28th November 1882:—

"When a motion is made that the chairman of a committee do report progress, or do leave the chair, the debate thereupon shall be confined to the matter of such motion; and no member, having moved or seconded any such motion, shall be entitled to move, or second, any similar motion during the same debate."

Again, by another Standing Order, if the chairman shall be of opinion that a motion, that the chairman do report progress or do leave the chair, is an abuse of the rules of the house, he may forthwith put the question. And by another Standing Order of the same date, on a motion that the chairman do report progress or do leave the chair, "if the decision of the chairman that the 'ayes' or 'noes' have it is challenged, he may call upon the members challenging it to rise in their places, and if there be less than twenty in a house of forty members, he may forthwith declare the determination of the house."

[1] On the 2nd July 1877, there were seventeen divisions, in Committee of Supply, upon such motions; 132 Com. J. 312.

[2] 113 Ib. 214; 150 Hans. Deb. 3rd Ser. 1688. See also Proceedings in Committee on Roman Catholic Charities Bill, 21st June 1860.

[3] 116 Com. J. 300. 333. 356.

Sittings suspended.

But although a committee of the whole house cannot adjourn, its sitting may be suspended for a certain time, like the sitting of the house itself, as was done on the 11th August 1848;[1] but such a proceeding is rarely necessary except during the occasional absence of the chairman.

Report.

If none of the interruptions and delays to which committees are liable should occur, the chairman is directed to report the resolutions or other proceedings to the house. Sometimes he is instructed to move for leave to bring in bills, or to inform the house of matters connected with the inquiries or deliberations of the committee; and until such report has been made, no reference may be made to it, nor to the proceedings of the committee. Formerly this question was followed by another, "that I do now leave the chair"; but as this formal question was sometimes made the occasion for further debate, it was provided by Standing Order, 27th November 1882,

Chairman to leave the chair without question.

"That when the chairman of a committee has been ordered to make a report to the house, he shall leave the chair without question put."

Report of resolutions.

By Standing Order, 19th July 1854, "every report from a committee of the whole house is to be brought up without any question being put." When the resolution of a committee relates to the grant of any public money, or the imposition of a tax upon the people, the chairman reports that the committee have agreed to a resolution which they have directed him to report to the house; and the house orders the report to be received on a future day: but resolutions upon all other matters are reported immediately. On the 25th July 1849, a committee of the whole house agreed to a resolution to authorise the collection of fees in the Court of Bankruptcy by means of stamps, which was reported forthwith, as the fees were not increased, but the mode of collection only altered. The resolutions reported by a committee are twice read before they are agreed to by the house; and on the question for reading them a second time, any

[1] 101 Hans. Deb. 3rd Ser. 90. See also 9 Com. J. 68.

relevant amendment may be proposed,[1] or general discussion upon the subject matter raised: but when they have been read a second time, no amendment or debate is permitted, except in regard to each resolution.[2] Every resolution may be amended,[3] disagreed to,[4] postponed,[5] or recommitted to the committee.[6] Resolutions which have been recommitted to a committee of the whole house, and reported, have been again recommitted to the committee.[7] The first reading (by the clerk) is a formal proceeding, without any question: but the question for reading resolutions a second time is put from the chair, and may be the subject of debate and amendment. An amendment proposed to the question for reading a resolution a second time, takes precedence of an amendment proposed to the resolution itself,[8] which is proposed after the second reading, and before the question is put, for agreeing with the committee in the resolution.[9]

In the Commons, the principal proceedings in committees of the whole house are in reference to bills, and the voting of supply, and ways and means; of which a description will be found in the chapters relating to these matters.[10]

Grand committees.

Since 1832, the annual appointment of the ancient Grand Committees[11] for Religion, for Grievances, for Courts of Justice, and for Trade, has been discontinued. They had long since fallen into disuse, and served only to mark the ample jurisdiction of the Commons in Parliament. When they were accustomed to sit, they were, in fact, constituted like committees of the whole house,[12] but sat at times when the house itself was not sitting.[13]

[1] 119 Com. J. 171.
[2] 174 Hans. Deb. 3rd Ser. 1551.
[3] 112 Com. J. 227; 119 Ib. 333.
[4] 75 Ib. 379; 76 Ib. 440; 95 Ib. 169.
[5] 77 Ib. 314; 83 Ib. 509.
[6] 77 Ib. 314; 119 Ib. 122.
[7] 83 Ib. 533.
[8] Tithes (Ireland), 2nd April 1832; 87 Com. J. 242. Maynooth College (Consolidated Fund) Report, 28th April 1845; 100 Com. J. 351.
[9] 112 Com. J. 175.
[10] See Chapters XVIII. and XXI.
[11] 1 Com. J. 873.
[12] 1 Com. J. 220. 822. 1042, &c.; 2 Ib. 3. 153. 202. 321, &c. Lex Parl. 339. Scobell, 35–38. 4 Rushworth, Col. 19. See also 3 Lord
[13] 3rd April 1626; 1 Com. J. 843; 14th April 1641; 2 Ib. 120, &c.

Committee of privileges.

The ancient committee of privileges is also analogous to a grand committee, consisting of certain members specially nominated, of all knights of shires, gentlemen of the long robe, and merchants in the house; and "all who come are to have voices." This committee is still appointed at the commencement of each session: but it is not nominated or appointed to sit, unless there be some special matter to be referred to it, as was the case in 1847.[1]

An approach to the revival of the ancient grand committees was made by the house in 1882. By Standing Orders, 1st December 1882, in force until the end of the session of 1883,

Standing committees on law and courts of justice, trade, &c.

"Two standing committees are to be appointed for the consideration of all bills relating to law and courts of justice and legal procedure, and to trade, shipping and manufactures, which may, by order of the house, in each case, be committed to them; and the procedure in such committees shall be the same as in a select committee, unless the house shall otherwise order: provided, that strangers shall be admitted, except when the committee shall order them to withdraw: provided also, that the said committees shall be excluded from the operation of the Standing Order of 21st July 1856, and the said committees shall not sit, whilst the house is sitting, without the order of the house: provided also, that any notice of amendment to any clause in a bill, which may be committed to a standing committee, given by any honourable member in the house, shall stand referred to such committee: provided also, that twenty be the quorum of such standing committees."

Nomination by committee of selection.

"Each of the said standing committees is to consist of not less than sixty, nor more than eighty, members, to be nominated by the committee of selection, who shall have regard to the classes of bills committed to such committees, to the composition of the house, and to the qualifications of the members selected; and shall have power to discharge members from time to time, and to appoint others in substitution for those so discharged. The committee of selection shall also have power to add not more than fifteen members to a standing committee in respect of any bill referred to it, to serve on the committee during the consideration of such bill."

Colchester's Diary, 481. "Awhile we had a less number present (in the grand committee on subsidies) than forty, which we account, by the orders of the house, to be the least number present at a grand committee;" D'Ewes, 5th June 1641; Harleian MSS.

[1] 103 Com. J. 139 (West Gloucester Election).

"The committee of selection shall nominate a chairmen's panel, to consist of not less than four nor more than six members, of whom three shall be a quorum; and the chairmen's panel shall appoint, from among themselves, the chairman of each standing committee, and may change the chairman so appointed from time to time." Appointment of chairman.

"All bills which shall have been committed to one of the said standing committees shall, when reported to the house, be proceeded with as if they had been reported from a committee of the whole house: provided, that the provisions of the Standing Order (consideration of a bill, as amended) shall not apply to a bill reported to the house by a standing committee." Commitment and report of bills.

Two committee rooms were specially prepared for these standing committees, and they commenced their sittings in April 1883, with every promise of success.

In the Commons, the proceedings of committees have been entered in the Journals since the 23rd February 1829, when the Speaker submitted to the house that arrangements should be made to effect that object, to which the house assented.[1] All amendments in committee on bills, upon which divisions arise, are fully entered in the Votes; but verbal amendments are only referred to in general terms.[2] And the Lords have more recently adopted a similar form of entry in their Journals. These records, in both houses, are a valuable addition to the means of comprehending the forms of parliamentary procedure. In a committee of the whole house, it is customary for the clerk assistant to officiate as clerk. And it may be added, that in the standing committees the minutes of proceedings are taken in the same form, and are printed and circulated with the Votes, from day to day.[3] Entry of proceedings in the Journals.

[1] 84 Com. J. 78.

[2] 191 Hans. Deb. 3rd Ser. 574.

[3] Votes, 9th and 10th April 1883.

CHAPTER XIV.

APPOINTMENT, CONSTITUTION, POWERS AND PROCEEDINGS OF SELECT COMMITTEES IN BOTH HOUSES.

General province of a select committee.

A SELECT committee is composed of certain members appointed by the house to consider, or inquire into, any matters, and to report their opinion, for the information of the house. Like committees of the whole house, select committees are restrained from considering matters not specially referred to them by the house. When it is thought necessary to extend their inquiries beyond the order of reference, a special instruction from the house gives them authority for that purpose;[1] or if it be deemed advisable to restrict, or direct their inquiries, an instruction may be given by the house, prescribing the limits of their powers,[2] or otherwise directing their course of proceedings,[3] or directing them to make a special report upon certain matters.[4] Inquiry by means of evidence is the most general object of a select committee, but committees may be appointed for any other purpose in which they can assist the house; and petitions, bills and other documents are constantly referred to them for consideration.

Reports and papers referred.

It is a common practice to refer to a committee the reports of previous committees, and other printed reports and papers. Such a reference is usually intended to direct the particular attention of the committee to documents relating to the subject of their inquiry, or to explain or enlarge the original terms of the reference. And in case the committee

[1] Taxation of Ireland, 2nd March 1865; 120 Com. J. 107. East India Communications, 23rd April 1866; 121 Ib. 243; 122 Ib. 351. Trade in Animals, 16th April and 30th July 1866; Ib. 222. 268. House of Commons (Arrangements), 8th July 1867; and see 137 Com. J. 117. 132.

[2] 75 Com. J. 259; 90 Ib. 522; 119 Ib. 146.

[3] 99 Ib. 284; 102 Ib. 24; 137 Ib. 37. 65.

[4] 137 Ib. 98.

should desire to cite, in their report, any document which has been laid upon the table of the house, it is usual to move that it be referred to them.

Petitions relating to the subject of inquiry are also frequently referred, which are laid before the committee by the clerk, from time to time.[1] Petitions referred.

In the House of Lords the special rules in regard to the appointment and constitution of select committees are few. By a Standing Order of the 5th May 1865, Appointment in the Lords.

"With regard to select committees of this house other than those on private bills, notice of any motion for naming the lords to serve on such committee, or for adding any lord to such committee, or for substituting any other lord for any lord named on such committee, shall be given and entered among the printed notices for the day, or previous to the day on which such motion shall be made."[2]

The house resolves that a select committee be appointed, after which it is ordered that certain lords then nominated shall be appointed a committee to inquire into the matters referred, and to report to the house. Lords are nominated in the order of their precedence. Their lordships, or any three of them (or a greater number, if necessary), are ordered to meet at a certain time in the Prince's Lodgings, near the House of Peers, and to adjourn as they please.[3] In special cases the Lords have appointed select committees by ballot.[4] There are also several standing or sessional committees appointed by the Lords at the commencement of every Session, viz., the committee of privileges, the sub-committee for the journals, the appeal committee, the standing order committee, the Parliament office committee, and the library committee.[5]

The order of sitting on the Lords' committees, and other matters, are thus defined by the Standing Orders: Sittings and proceedings in the Lords.

"A select committee usually meets in one of the rooms adjoining to the upper house, as the lords like; any of the lords of the committee

[1] 189 Hans. Deb. 3rd Ser. 1047.
[2] Lords' S. O. No. 45.
[3] 109 Lords' J. 30.
[4] 16 Ib. 758; 22 Ib. 116; 40 Ib. 198; and see *infra*, p. 460.
[5] The latter has not lately been appointed.

speaks to the rest uncovered, but may sit still if he pleases; the committees are to be attended by such judges or learned counsel as are appointed; they are not to sit there or be covered, unless it be out of favour for infirmity; some judge sometimes hath a stool set behind, but never covers, and the rest never sit or cover.[1]

A select committee of the House of Lords may sit, notwithstanding any adjournment of the house, without special leave.

Witnesses, how summoned in the Lords.

The House of Lords do not give select committees any special authority to send for witnesses or documentary evidence, nor have the committee any such power: but parties are ordinarily served with a notice from the clerk attending the committee, that their attendance is requested on a certain day, to be examined before the committee. Until recently such witnesses were required, previously to their examination, to be sworn at the bar of the house: but by the 21 & 22 Vict. c. 78, any committee of the House of Lords may now administer an oath to the witnesses examined before them. Where a positive order is thought necessary to enforce the attendance of a witness, or the production of documents, it emanates from the house itself. A select committee upon a bill cannot examine witnesses, except by order of the house. It is usual to give a Lords' committee power to appoint their own chairman: but when no such power is given, the chairman of committees (though not named as a member) is the chairman, by virtue of his office.

On the 25th June 1852, the Lords agreed to the following resolutions:[2]

Minutes of proceedings on Lords' committees.

"That to every question asked of a witness under examination in the proceedings of any select committee of the house, there be prefixed, in the minutes of the evidence, the name of the lord asking such question.

"That the names of the lords present each day on the sitting of any select committee be entered on the minutes of evidence, or on the minutes of the proceedings of the committee (as the case may be), and reported to the house on the report of such committee."

[1] Lords' S. O. No. 42.

[2] 84 Lords' J. 344.

And on the 7th December 1852, the Lords agreed to the following resolution :

"That in the event of a division taking place in any select committee, the question proposed, the name of the lord proposing the question, and the respective votes thereupon of each lord present, be entered on the minutes of evidence, or on the minutes of the proceedings of the committee (as the case may be), and reported to the house on the report of such committee." Divisions.

The chairman of a Lords' committee votes, like the other members, but has no casting vote, a question being decided in the negative, if the votes be equal.

In order to ensure fairness and efficiency in the constitution and proceedings of select committees, and to make their conduct open to observation, the House of Commons have the following Standing Orders : Appointment, constitution, and practice in the Commons.

1. "That no select committee shall, without leave obtained of the house, consist of more than fifteen members; that such leave shall not be moved for without notice; and that in the case of members proposed to be added or substituted after the first appointment of the committee, the notice shall include the names of the members proposed to be added or substituted." Number of members.

2. "That every member intending to move for the appointment of a select committee, do endeavour to ascertain previously, whether each member proposed to be named by him on such committee, will give his attendance thereupon." Attendance.

3. "That every member intending to move for the appointment of a select committee, shall, one day next before the nomination of such committee, place on the notices the names of the members intended to be proposed by him to be members of such committee." Notice of names.

4. "That lists be fixed in some conspicuous place in the committee clerks' office, and in the lobby of the house, of all members serving on each select committee." List of members.

5. "That to every question asked of a witness under examination in the proceedings of any select committee, there be prefixed in the minutes of the evidence the name of the member asking such question." Questions to witnesses.

6. "That the names of the members present each day on the sitting of any select committee be entered on the minutes of evidence, or on the minutes of the proceedings of the committee (as the case may be), and reported to the house on the report of such committee." Minutes of proceedings.

7. "That in the event of any division taking place in any select committee, the question proposed, the name of the proposer, and the Divisions.

respective votes thereupon of each member present, be entered on the minutes of evidence, or on the minutes of the proceedings of the committee (as the case may be), and reported to the house on the report of such committee."

Appointment of members.

In compliance with the first of these orders, a select committee is usually confined to fifteen members: but if from any special circumstances a larger number should be thought necessary, the house will make an order that the committee do consist of a certain other number: but not until due notice has been given.[1] In special cases, the house have also thought fit to appoint certain committees by ballot;[2] or to name two members, and to appoint the rest of the committee by ballot;[3] or to choose twenty-one names by ballot, and to permit each of two members nominated by the house to strike off four from that number.[4] Members have also been nominated to serve on a committee, to examine witnesses, without the power of voting;[5] or to serve on a committee, and to take part in its proceedings, but without the power of voting.[6]

Committee on matters of privilege.

A committee upon a matter of privilege may be appointed and nominated forthwith without notice; such a committee having been held not to be governed by any of the orders applicable to the appointment and nomination of other select committees.[7]

Appointment by general committee of elections.

For several years, where the inquiry was of a judicial character, it was usual to delegate the nomination of the committee to the general committee of elections. In the Stamford Borough case, 1848, the general committee were

[1] Of 21 members (Civil Bills (Ireland) Bill, 1851), 106 Com. J. 218; of 31 members (Indian Territories, 1852), 107 Com. J. 168; of 30 members (Leasing Powers, &c. (Ireland) Bills), 108 Com. J. 284; of 23 members (Merchant Ships), 135 Com. J. 84; of 27 members (Merchant Shipping), Ib. 180; Railway Rates, and Agricultural Tenants Compensation Bills, 1882, 137 Ib. 21. 376.

[2] 74 Com. J. 64, &c. See also 3 Lord Colchester's Diary, 37.

[3] 88 Com. J. 144. 467, &c.

[4] Ib. 160. 475.

[5] Carlow Election, 91 Com. J. 42.

[6] Ameer Ali Moorad's Claim, 1858; 113 Com. J. 68.

[7] 112 Ib. 232. 146 Hans. Deb. 3rd Ser. 97. 113 Com. J. 68. 148 Hans. Deb. 1855-1867.

instructed to select a chairman and eight other members, seven to be the quorum.[1] In the Derby case, 1852, the gentlemen named on the general committee[2] were instructed to select a committee of five members, and the parties had leave to appear by counsel and agents.[3] In the Berwick case, 1853, the general committee were instructed to select a chairman and six other members.[4] In the Sligo election case,[5] and also in Mr. Stonor's case, 1854, the general committee were instructed to appoint the committee, consisting of five members;[6] and, in the latter case, the house added one member, and directed the general committee to add another, to examine witnesses, but without the power of voting.[7] In some cases specially relating to controverted elections, the general committee was itself instructed to inquire into particular matters.[8]

In 1864, on the nomination of a committee upon education (Inspectors' Reports), a question being proposed that Mr. Bruce be one member of the committee, an amendment was moved and carried, that the committee do consist of five members to be nominated by the general committee of elections, and that two other members, to be named by the general committee, be appointed to serve on the committee to examine witnesses, but without the power of voting.[9] In 1865, the committee on the Leeds Bankruptcy Court consisted of five members, nominated by the general committee of elections, and two other members to serve on the committee to examine witnesses, but without the power of voting.[10] The transfer of the judicature of the Commons, in controverted elections, and the consequent discontinuance of the

[1] 103 Com. J. 555.

[2] The Speaker's warrant of appointment had been laid upon the table, but the period had not elapsed within which objections might be made to the members named.

[3] 108 Com. J. 158.

[4] Ib. 518.

[5] 199 Com. J. 36.

[6] Votes, 6th April 1854.

[7] 109 Com. J. 232.

[8] Cashel Election Petition, 1858; 113 Ib. 80. Lisburn Election, 1863; 118 Ib. 164.

[9] Votes, 2nd June 1864.

[10] 120 Com. J. 312.

general committee of elections, has deprived the house of a convenient agency for the nomination of committees: and the committee of selection has since taken its place, in the performance of that duty. Sometimes a certain number of members have been nominated by the house, and other members by the committee of selection.[1] On numerous occasions, also, committees on bills have been nominated partly by the house and partly by the committee of selection.[2] On the 15th March 1869, the committee on Naval Contracts was ordered to consist of seven members, five to be nominated by the committee of selection, and two to be added by the house.[3] A similar proposal was made on the 19th June 1873, in regard to the committee on the Cape of Good Hope and Zanzibar Mail Contract, but was withdrawn; and being renewed on the 26th, was, after full discussion, negatived by the house, upon division.[4] On the 16th April 1883, the nomination of five members to serve on a joint committee of Lords and Commons, was referred to the committee of selection. The nomination of committees by the house itself, is often so difficult and troublesome a proceeding,[5] that some delegation of the duty is much to be desired. And the nomination of the standing committees, on law and trade, by the committee of selection may point to the extension of the same principle to other cases.

By committee of selection.

Standing committees.

There is further an exceptional class of committees, called standing committees. The only committee properly so termed, until 1882,[6] was one which, being appointed by Standing Order, was permanent,—the nomination only being renewed from session to session. Such is the committee of public accounts under a Standing Order of the 3rd April 1862. In the same category are the committee on Standing Orders, the committee of selection, and the general committee on railway and canal

[1] 135 Com. J. 26. 47.

[2] See Chapter XVIII. (Public Bills; and XXVI (Private Bills).

[3] 124 Com. J. 85. 87.

[4] Hans. Deb. 19th and 26th June 1873.

[5] On the 16th March 1876, there were no less than seventeen divisions upon the nomination of the Committee upon Referees on Private Bills.

[6] See *supra*, p. 444.

bills, though not expressly designated as standing committees. Occasionally a committee has been so called,—not quite accurately, being re-appointed every session,—such as the Library committee, now discontinued, and the Kitchen and refreshment rooms committee.

Members are frequently added to committees, and other members originally nominated are discharged from further attendance, after previous notice given in the Votes;[1] and if it be proposed to add members, so as to increase the number of the committee beyond fifteen, or such other number as the house may have agreed upon, it is necessary to give notice of a motion that the committee shall consist of the larger number.[2] Members added and discharged.

Whatever may be the number of a committee, it is not probable that all could attend throughout the proceedings, and the house orders, in each case, what number shall be a quorum. Where no quorum is named, it is necessary for all the members of the committee to attend. Three are generally a quorum in committees of the upper house, and in the Commons the usual number is five; but three are sometimes allowed,[3] and occasionally seven,[4] or nine,[5] or any other number which the house may please to direct. In two cases where the investigations of committees partook of a judicial character, the house named a quorum of five, but at the same time ordered the committee to report the absence of any member on two consecutive days.[6] Late in the session, the original quorum of a committee is sometimes reduced.[7] Where a quorum is prescribed by a Standing Order, the order is suspended before the quorum is reduced.[8] Quorum.

[1] 178 Hans. Deb. 3rd Ser. 956.

[2] 112 Com. J. 157, &c.

[3] 111 Ib. 8. 12; 120 Ib. 46.

[4] Army before Sebastopol, 1855; 110 Ib. 87; 125 Ib. 40; 126 Ib. 61, &c.

[5] Committee of privileges, 1854; 109 Com. J. 75. Oaths of members, 1857; 112 Ib. 374.

[6] Great Yarmouth and York Elections, 90 Ib. 457. 504.

[7] 106 Com. J. 279; 116 Ib. 291; 127 Ib. 219; 128 Ib. 361.

[8] Public Accounts Committee; 123 Com. J. 91; 124 Ib. 340, &c.

A committee cannot proceed to business without a quorum, but must wait until the proper number of members have come into the room; and by Standing Order, 25th June 1852,

"If, at any time during the sitting of a select committee of this house, the quorum of members fixed by the house shall not be present, the clerk of the committee shall call the attention of the chairman to the fact, who shall thereupon suspend the proceedings of the committee until a quorum be present, or adjourn the committee to some future day."

On the 28th May 1852, an instruction was given to the Income and Property Tax committee to report the evidence of a witness, although given when the quorum of the members of the committee was incomplete.[1]

Power to send for persons, papers, and records.

As the object of select committees is usually to take evidence, the House of Commons, when necessary, gives them "power to send for persons, papers, and records." By virtue of this authority, any witness may be summoned by an order, signed by the chairman, and he must bring all documents which he is informed will be required, for the use of the committee. Any neglect or disobedience of a summons will be reported to the house, and the offender will be treated in the same manner as if he had been guilty of a similar contempt to the house itself. Witnesses, however, are not summoned from India or the colonies: but application is made to the Secretary of State to secure their attendance, or to obtain answers to written questions.[2] In 1873, the East India Finance committee resolved that the expenses of witnesses coming from India (not exceeding 10,000*l.*) should be paid out of the revenue of the United Kingdom.[3] Witnesses are examined upon oath, or not, at the discretion of the committee, according to the nature of the inquiry:[4] but the power is reserved for cases of a judicial character.[5]

[1] 107 Com. J. 254.

[2] Army (India and the Colonies) Committee, 1867.

[3] Resolution, 20th April 1873.

[4] 34 & 35 Vict. c. 83; and see *infra*, p. 481.

[5] *E. g.* Foreign Loans Committee, 1875 (Minutes, 11th March).

This general notice of the power of committees in respect to witnesses will suffice in this place, as the proceedings of Parliament in regard to the summoning, examination, and reqishment of witnesses, will appear more at length in the on chapter.[1]

In 1849, the Fisheries (Ireland) committee was appointed, with power to send for *papers* and *records* only,[2] but examined witnesses who voluntarily tendered their evidence. This arrangement was made in order to save the expense of witnesses summoned in the usual manner; and placed the committee in the same position, in regard to the examination of witnesses, as a committee on a private bill.

For papers and records only.

A select committee on a bill, having power to send for persons, papers, and records, can only take evidence concerning that bill, unless the scope of its inquiries be enlarged by an instruction.[3]

A select committee have no power to send for any papers which, if required by the house itself, would be sought by address. In such cases the chairman may either move an address in the house, or communicate with the Secretary of State to whose department the papers relate, who will lay them before Parliament if he thinks proper, by command of her Majesty. The papers, when received, will then be referred to the committee by the house. Nor is a committee at liberty to send for any papers which, according to the rules and practice of the house, it is not usual for the house itself to order. In the committee on the Thames Embankment, in 1871, objections were raised to the production of a case laid before the law officers of the Crown, on the ground that such a document was not usually required to be produced by the house itself: but when it appeared that this opinion had already been presented, with other papers, the production of the case, upon which that opinion was founded,

Where papers require an address.

[1] See *infra*, p. 472.

[2] 104 Com. J. 75.

[3] Mr. Speaker's ruling, 18th March 1868; 190 Hans. Deb. 3rd Ser. 1870; and see 123 Com. J. 263.

could not be resisted, and the case was accordingly presented to the committee.[1]

Special inquiries.

In 1868, the select committee on the Boundaries of Boroughs had leave to receive and call for maps, memorials, reports, papers, and records concerning the said boroughs, and to confer with the boundary commissioners, and those employed under them in their inquiries, and with the members of the counties and boroughs affected.[2]

Appointment discharged.

Orders for the appointment of select committees are occasionally discharged;[3] and other committees, with different orders of reference appointed.[4]

Presence of strangers.

When a select committee of the House of Lords are examining witnesses, the presence of strangers is forbidden, it being ordered that no man is to enter "but such as are members of the house, or the heir apparent of a lord who has a right to succeed such lord, or the eldest son of any peer who has a right to sit and vote."[5] But in the Commons, the presence of strangers is generally permitted. Their exclusion, however, may be ordered at any time, and continued as long as the committee may think fit. When they are deliberating, it is the invariable practice to exclude all strangers, in order that the committee may be exposed to no interruption or restraint.

All lords may come, but not vote.

All the lords are entitled to attend the select committees of that house, subject to the following regulations:—

"Here it is to be observed, that at any committee of our own, any member of our house, though not of the committee, is not excluded from coming in and speaking, but he must not vote; as also he shall give place to all that are of the committee, though of lower degree, and shall sit behind them, and observe the same order for sitting at a conference with the Commons."[6]

But this privilege does not extend to a secret committee.

[1] Minutes of the Committee. Private mem.

[2] 123 Com. J. 183.

[3] 93 Ib. 265; 99 Ib. 300; 108 Ib. 487; Conventual Establishments, 18th May 1854. This case presents examples of every conceivable obstacle that can be opposed to the nomination of a committee, after its appointment.

[4] Conventual and Monastic Institutions, 1870.

[5] Lords' S. O. No. 44.

[6] Ib. 43.

Members of the House of Commons have claimed the right of being present, as well during the deliberations of a committee as while the witnesses are examined; and although, if requested to retire, they would rarely make any objection, on the grounds of constant practice and courtesy to the committee, they ought immediately to retire when the committee are about to deliberate; yet it appears that the committee, in case of their refusal, have no power to order them to withdraw. Presence of members.

On the 24th April 1626, Mr. Glanvyle, from the select committee on the charges against the Duke of Buckingham, stated that exceptions were taken by some members of the house against the examinations being kept private, without admitting some other members thereof, and desired the direction of the house. It is evident from this statement that the committee had exercised a power of excluding members; and though it is said in the Journal that much dispute arose upon the general question, "whether the members of the house, not of a select committee, may come to the select committee," no general rule was laid down: but in that particular case the house ordered, Precedents. Charges against the Duke of Buckingham.

"That no member of the house shall be present at the debate, disposition, or penning of the business by the select committee; but only to be present at the examination, and that without interposition."[1]

An opinion somewhat more definite may be collected from the proceedings of the India Judicature committee, in 1782. In that case the committee were about to deliberate upon the refusal of Mr. Barwell to answer certain questions; and on the room being cleared, he insisted upon his privilege, as a member of the house, of being present during the debate. The committee observed, that Mr. Barwell being the party concerned in that debate, they thought he had no right to be present. Mr. Barwell still persisted in his right, and two members attended the Speaker, and returned with his opinion, East India judicature. Mr. Barwell.

[1] 1 Com. J. 849.

that Mr. Barwell had no right to insist upon being present during the debate; upon which Mr. Barwell withdrew. Here the ground taken by the committee for his exclusion was, that he was concerned in the debate, and not simply that, as a member, he had no right to be present at their deliberations. The house soon afterwards ordered,

"That when any matter shall arise on which the said committee wish to debate, it shall be at their discretion to require every person, not being a member of the committee, to withdraw."

The inference from this order must be, that the committee would not otherwise have been authorised to exclude a member of the house.[1]

King's physicians.

When committees were appointed to examine the physicians of King George III., in 1810 and 1811, the house also ordered, "That no member of this house, but such as are members of the committee, be there present."[2]

Election proceedings committee, 1852.

In 1852, the committee on election proceedings resolved "that it was desirable for the interests of the inquiry, and all parties concerned, that no person should be present, except the witness under examination," and induced two members to withdraw, "without deciding on their right to be present." A third member insisted upon his right to be present, which was not contested by the committee; and he was not induced to withdraw until after the committee had resolved to adjourn, if he persisted in remaining.[3] On the 29th June, the committee, to prevent further misunderstandings, reported that they had unanimously resolved, "that it was desirable that no person should be present, except the witness under examination: but that the committee, having reason to believe that the right of members to be present at their proceedings will be insisted on, had directed the chairman to call the attention of the house to the subject." The exclusion proposed, in this case, extended not only to the deliberations

[1] 38 Com. J. 370.
[2] 66 Ib. 6; 67 Ib. 17.
[3] Minutes of Proceedings of the Committee, MS.

of the committee, but also to the examination of witnesses, and was not sanctioned by the house.[1]

Irish poor committee, 1849.

On the 23rd February 1849, in the case of the Irish Poor committee, the Speaker stated, that although it had been the practice for members, not being members of the committee, to withdraw while the committee were deliberating or dividing; yet if members persisted in remaining, the committee have no power to exclude them, unless by application to the house.[2]

Army before Sebastopol.

On the 1st March 1855, a report was brought up from the committee on the Army before Sebastopol, "That, in the opinion of this committee, the objects for which they have been appointed will be best attained, the danger of injustice to individuals be prevented, and the public interest best protected, if the committee be a committee of secrecy." On the following day, when the report was considered, strong objections were urged, in debate, to the proposed secrecy of the committee, and the motion of the chairman, "that the committee be a committee of secrecy," was withdrawn.[3]

Rochdale election.

On the 20th June 1857, the select committee on the Rochdale election resolved, "That the object of the inquiry will best be promoted by the investigation being carried on in the presence of the members of the committee alone." This resolution was communicated to several members outside, by the committee clerk, and the greater part of them went away: but Colonel French entered the room, asserted his right to be present; and then, out of courtesy to the committee, withdrew. On the 22nd June, he brought the matter to the notice of the house, and appealed to the Speaker, whether a select committee was able to constitute itself a secret committee, without an order of the house. The chairman disclaimed, on the part of the committee, any intention of asserting a power of excluding members: it had merely agreed to a resolution that, in its opinion, the

[1] 97 Com. J. 438.

[2] 102 Hans. Deb. 3rd Ser. 1183.

[3] 137 Ib. 18.

inquiry would be best conducted in their absence. It was for them to defer to that opinion, or not, at their discretion. The Speaker, after citing the case of the Irish Poor committee, 1849, said that there was no doubt that a select committee had no power to enforce the exclusion of any members of the house, and that, in truth, there had been no difference of opinion upon this question between the committee and other honourable members.[1]

General results.

These precedents leave no doubt that members cannot be excluded from a committee room by the authority of the committee; and that if there should be a desire on the part of the committee, that members should not be present at their proceedings, when there is reason to apprehend opposition, they should apply to the house for orders similar to those already noticed. At the same time, it cannot fail to be observed, that such applications have not been very favourably entertained by the house.

Secret committees.

But when, in the opinion of the house, secrecy ought to be maintained, secret committees are appointed,[2] whose inquiries are conducted throughout with closed doors; and it is the invariable practice for all members, not on the committee, to be excluded from the room throughout the whole of its proceedings.[3] On several occasions secret committees, in both houses, have been chosen by ballot.[4]

[1] 146 Hans. Deb. 3rd Ser. 137. See also debate, 16th May 1861, on the complaint of Mr. MacEvoy; 162 Hans. Deb. 3rd Ser. 2095.

[2] 53 Lords' J. 115. 38 Com. J. 430. 435; 65 Ib. 37; 92 Ib. 26; 99 Ib. 461; 112 Ib. 24.

[3] "In the course of the debate (on the Committee of Secrecy on the Bank of England), Mr. Fox and Mr. Grey both stated distinctly and expressly, and without contradiction, that the nature of a committee of secrecy was only that it excluded from their proceedings all strangers: but that the members of the committee were not otherwise bound to individual secrecy out of the committee, than as their own sense of duty or propriety might suggest, according to the nature and object of their inquiry." Lord Colchester's Diary, 9th March 1797, i. 91. For a discussion as to the peculiarities of a secret committee, see debates upon the Budget and Navy Estimates, 22nd Feb. 1848; 96 Hans. Deb. 3rd Ser. 987. 1056. Bank Acts Committee, 12th Feb. 1857; 144 Hans. Deb. 3rd Ser. 596.

[4] 41 Lords' J. 96. 113 (Bank); 42 Ib. 176 (Treasonable Conspiracy in

When members attend the sittings of a committee, they assume a privilege similar to that exercised in the house, and sit or stand without being uncovered.

Joint committees.

It may here be mentioned, that sometimes a committee of one house is appointed to join with a committee of the other house; but such committees are more particularly described in another place.[1]

Chairman chosen.

The first proceeding of a committee is to choose a chairman, who is ordinarily called to the chair by the general voice of the members present: but in the event of a difference of opinion, the choice is governed by the same rules as those observed by the house in the election of a Speaker.[2]

Divisions.

Every question is determined in a select committee, in the same manner as in the house to which it belongs. In the Lords' committees, the chairman votes like any other peer; and if the numbers on a division be equal, the question is negatived, in accordance with the ancient rule of the House of Lords, "*Semper præsumitur pro negante.*" In the Commons, the practice is similar to that observed in divisions of the house itself.

Casting voice of chairman.

On the 25th March 1836, the house was informed that the chairman of a select committee had first claimed the privilege to vote as a member of the committee, and afterwards, when the voices were equal, of giving a casting vote as chairman; and that such practice had, of late years, prevailed in some select committees;[3] upon which the house declared, "That, according to the established rules of Parliament, the chairman of a select committee can only vote when there is an equality of voices."[4]

Ireland); 43 Ib. 97 (Suspension of Habeas Corpus); 56 Com. J. 259 (State of Ireland); 67 Ib. 492 (State of Counties); 74 Ib. 64 (Bank). On the state of the country (Lords), 5th Feb. 1818; 37 Hans. Deb. p. 155.

[1] Chapter XVI.

[2] Minutes of committees; Savings banks, 1849; Bills of Exchange Bill, 1855; Rochdale election, 1857; Tenure and Improvement of Land (Ireland) Act, 1865.

[3] This misconception of the usage of parliament may have arisen from the peculiar practice of election committees, as regulated by Act of Parliament.

[4] 91 Com. J. 214. In the Com-

Committees on private bills.

But in committees on private bills, a different practice has been introduced, as it is ordered,

"That all questions shall be decided by a majority of voices, including the voice of the chairman; and whenever the voices are equal, the chairman shall have a second or casting vote."[1]

This deviation from the ordinary rule of voting in select committees was rendered necessary by the peculiar constitution of group committees, then consisting of five members only. When one member was absent, a difficulty arose in determining a question without some new regulation: for otherwise two members could have decided every question, although the chairman agreed with the remaining member; and in 1864, this difficulty was further increased by the reduction of such committees to four members.[2] A member having voted by mistake, has been allowed to correct the error.[3] And a member's vote has been disallowed, as he was not in the room when the question was put.[4]

Adjournment of committees.

From place to place.

A select committee may adjourn its sittings from time to time, and occasionally a power is also given by the house to adjourn from place to place:[5] or from time to time, and from place to place.[6] This power of adjournment from place to place is generally intended to enable a committee to hold its sittings in different parts of London, as the Mint committee

mittee on the Consolidation of the Customs and Inland Revenue, 1863, Mr. Horsfall, the chairman, had prepared a report, which was negatived by a majority of one. Mr. Cardwell then proposed a report embodying the opinions of the majority: but at the next meeting of the committee, Mr. Horsfall declined to resume the chair, and proposed that Mr. Cardwell should take it,—his object being to obtain a majority in favour of his own views. The matter being referred to Mr. Speaker, he expressed an opinion that the course proposed was contrary to the spirit of parliamentary proceedings, and Mr. Horsfall resumed the chair: but a committee so balanced being unable to agree, they merely reported the evidence without any opinion.—Mr. Speaker Denison's Note-Book.

[1] S. O. 125.

[2] 119 Com. J. 460.

[3] Railway Rates, &c., Committee, 1882; Report, p. 50.

[4] Ib. p. 63.

[5] 89 Com. J. 419; 101 Ib. 152; 105 Ib. 215; 107 Ib. 279; 108 Ib. 453; 111 Ib. 318.

[6] 108 Ib. 350.

of 1837 at the Mint; the Coal Mines committee of 1852 at the Polytechnic Institution; the National Gallery committee of 1853 at the National Gallery; and the Oaths committee of 1850 at the house of Mr. Wynn, a member of the committee, who was sick. But in 1834, the committee on the Inns of Court appointed a quorum to go into Essex, to take the evidence of a witness who was unable to move from home. In 1858, it was proposed to give the power of adjourning from place to place to the committee on contracts (Public Departments), in order to enable it to hold its sitting at Weedon; but the proposal was withdrawn, and a royal commission appointed. In 1863, this power was granted to the committee on the Thames Conservancy, to empower it to visit different parts of the river, to which its inquiry extended.[1] In 1864, the same power was given to the committee on Schools of Art.[2] In certain cases select committees have been appointed expressly for the purpose of taking the examination of witnesses who were incapacitated by sickness from attending personally to be examined before the house or its committees.[3]

Committees appointed to examine sick witnesses.

Without special leave, no committee of the Commons may sit during the evening sitting of the house, or after any adjournment for a longer period than till the next day. By a Standing Order of the Commons, 25th June 1852, it is ordered,—

Not to sit during sitting, or after adjournment of the house.

"That the serjeant-at-arms attending this house do, from time to time, when the house is going to prayers, give notice thereof to all committees; and that all proceedings of committees, after such notice, be declared to be null and void, unless such committees be otherwise empowered to sit after prayers."

Prayers.

On the 1st May 1879, Mr. Speaker explained, in reply to a question, that it had been the custom for the Speaker to send the serjeant to committees to request members to make

[1] Votes, 28th May 1863.
[2] 119 Com. J. 255.
[3] 61 Ib. 435. 2 Hatsell, 138, *n.*

a house, but that he had no authority to compel their attendance.[1]

But by another Standing Order, 21st July 1856, it is ordered,—

"That on Wednesdays, and other morning sittings of the house, all committees shall have leave to sit, except while the house is at prayers, during the sitting, and notwithstanding the adjournment of the house."

And in order to avoid any interruption to urgent business before committees, leave is frequently obtained, on the meeting of the house in the afternoon, for a committee to sit till five o'clock, or such other hour as may be agreed upon; and on Friday night leave is given, when necessary, to a committee to sit on Saturday, notwithstanding the adjournment of the house.

Of late years orders have usually been made that no committees shall have leave to sit on Ascension Day until two o'clock, but have leave to sit until six,[2] in order to enable members to attend morning service. And on Ash Wednesday, committees rarely sit: but, if necessary, meet after two o'clock, to which hour the house is adjourned.

Adjournment of committees.

A select committee ought to be regularly adjourned from one sitting till another, though in practice the re-assembling of the committee is sometimes left to be afterwards arranged by the chairman, by whose direction the members are summoned for a future day: but this practice, not being regular, can only be resorted to for the convenience of the members, and with their general concurrence. In 1871, a complaint was made, that after a day had been fixed for the next meeting of the committee by the chairman, he had, after consulting several members of the committee, appointed an earlier day: but it was ruled that, under the circumstances explained to the house, such a proceeding was not irregular.[3]

[1] 245 Hans. Deb. 3rd Ser. 1500.

[2] 132 Com. J. 209; 133 Ib. 254; 134 Ib. 232; 135 Ib. 260; 137 Ib. 205. See also *supra*, p. 243.

[3] 205 Hans. Deb. 3rd Ser. 685.

Sometimes a committee has been ordered to sit *de die in diem*.[1] In 1869 an instruction was given to the committee on naval contracts to sit and proceed forthwith, and to sit from day to day.[2] To sit *de die in diem*.

In 1856, the Masters and Operatives committee was revived[3] in consequence of an irregularity in its adjournment; being the first instance, it is believed, of such a proceeding, except in the case of committees on private bills. A select committee revived.

Where select committees have been appointed to inquire into matters in which the private interests, character or conduct of any persons appeared to be concerned, petitions praying to be heard by counsel have been referred, and counsel ordered.[4] Counsel.

The evidence of the witnesses examined before a select committee is taken down in short-hand, and printed daily for the use of the members of the committee. In the Lords, the printing is authorised by a special order of the house, in each case: in the Commons, it is done according to long-established practice. A copy of his own examination is also sent to each witness for his revision, with an instruction that he can only make verbal corrections, as corrections in substance must be effected by re-examination. The alterations should be confined to the correction of inaccuracies, or the necessary explanation of any answer, and are required to be in the handwriting of the witness himself, unless he is disabled by accident or infirmity, in which case they may be written by another person at his dictation. The corrected copy should be returned without delay to the committee clerk, who is to examine the corrections, and if any appear to be irregular, he is to submit them to the chairman. If the evidence be not returned, with corrections, in six days, or some other reasonable time, according to the circumstances, Printed minutes of evidence.

[1] 123 Com. J. 183.
[2] 124 Ib. 87.
[3] 111 Ib. 298.
[4] 62 Ib. 110; 77 Ib. 405; 88 Ib. 169. 568. 588; Rochdale Vicarage Bill, 1866; Thames Conservancy Bill, 1866; Tramways Bill, 1870.

it will be printed in its original form.[1] Where evidence has been taken upon oath, its correction should be restrained within very narrow limits.

On the 20th July 1849, an instruction was given to a select committee to re-examine a witness "touching his former evidence," as it appeared that he had corrected his evidence more extensively than the rules of the house permitted, and his corrections had consequently not been reported by the committee.[2]

In 1849, a committee of the House of Lords reported that the alterations made by some of the witnesses were so unusual, that they had ordered the alterations and corrections to be marked, and printed in the margin.[3]

Not to be published until reported.

Neither the members, nor the witnesses to whom these copies are entrusted, are at liberty to publish any portion of them, until they have been reported to the house. On the 21st April 1837, it was resolved by the Commons,

> "That according to the undoubted privileges of this house, and for the due protection of the public interest, the evidence taken by any select committee of this house, and documents presented to such committee, and which have not been reported to the house, ought not to be published by any member of such committee, nor by any other person."[4]

In some cases, leave has been given to the parties appearing before a select committee to print the evidence from the committee clerk's copy, from day to day.[5]

Draft report not to be published.

Any publication of the report of a committee, before it has been presented to the house, is treated as a breach of privilege. On the 31st May 1832, complaint was made of the publication of a draft report of a committee, in a Dublin newspaper: the proprietor admitted that he had sent the

[1] Instructions by Mr. Speaker, 16th April 1861; and see 189 Hans. Deb. 3rd Ser. 1223.

[2] 104 Com. J. 525.

[3] Audit of Railway Accounts (North Wales Railway).

[4] 92 Com. J. 282. See also *supra*, p. 93.

[5] The Metropolis Water Bill, 1871; 126 Com. J. 292; 131 Ib. 300. 350; 132 Ib. 141. 202, &c.; 135 Ib. 209.

copy, and stated that he was willing to take the responsibility upon himself, but must decline to give information which might implicate any other person. He was accordingly declared guilty of a breach of privilege, and committed to the custody of the serjeant.[1]

In 1850, a draft report of the committee on Postal communication with France was published in two newspapers, while it was under consideration. The committee vainly endeavoured to trace the parties from whom the copy had been originally obtained, but recommended improved regulations for the printing, distribution, and custody of such documents.[2]

Draft resolutions or report.

When the evidence has been concluded, the chairman prepares resolutions, or a draft report, which it is customary to print and circulate among the members, before they are considered. Resolutions are open to discussion and amendment, subject to the same rules as in a committee of the whole house.[3] No resolution or amendment may be proposed, which is not within the order of reference; and the chairman will decline to put it from the chair.[4] When a resolution has been agreed to, the committee are unable to review and amend it. When there are more than one series of resolutions, it is usual to move that those to be proposed by Mr. A. (generally the chairman) be now taken into consideration; which question may be amended by leaving out "Mr. A." and inserting "Sir W. H.;" and the opinion of the committee being ascertained, the consideration of the resolutions preferred by them is proceeded with. A draft report is read a first time *pro formâ*, and a second time paragraph by paragraph, every part being liable to amendment, according to the ordinary rules which govern amendments. A question is also put that each paragraph, or each paragraph as amended, stand part of the report. In case there should be two or

[1] 87 Com. J. 360.
[2] Rep. p. vi., Sess. 1850 (381).
[3] *Supra*, p. 429.
[4] Committee on Local Taxation, 1870; Resolution of Sir M. Lopes.

more draft reports, proposed by different members, they are severally read a first time, when a question is proposed that the draft report proposed by Mr. C. be now read a second time, paragraph by paragraph; to which an amendment may be moved to leave out "Mr. C." and insert "Lord D.;" and when the committee have decided which of the rival reports shall be accepted for consideration, it is proceeded with, paragraph by paragraph. New paragraphs may also be inserted throughout the report, or added by way of amendment. When the whole report has been agreed to, a question is put that it be the report of the committee to the house.

Power to report.

Until lately, a committee had no power to report either their opinion, or the minutes of evidence taken before them, without receiving express power for that purpose from the house. But by Standing Order, 9th August 1875,

> "Every select committee, having power to send for persons, papers and records, shall have leave to report their opinion and observations, together with the minutes of evidence taken before them, to the house, and also to make a special report of any matters which they may think fit to bring to the notice of the house."

Special report.

When it is desired to report any matters to the house, not comprised in the order of reference, or otherwise exceptional, leave is obtained from the house to make a special report.

Power to report from time to time.

It is the general custom to withhold the evidence until the inquiry has been completed, and the report is ready to be presented: but whenever an intermediate publication of the evidence, or more than one report, may be thought necessary, the house will grant leave, on the application of the chairman, for the committee to "report its opinion or observations, from time to time," or to "report minutes of evidence" only, from time to time.[1] And until the report and evidence have been laid upon the table, it is irregular to refer to them in debate;[2] or to put questions in reference to the proceedings

[1] 74 Lords' J. 80, &c. 92 Com. J. 18. 167; 112 Ib. 282, &c.

[2] 159 Hans. Deb. 3rd Ser. 814; 193 Ib. 1124.

of the committee.[1] If a committee, not having power to report from time to time, make a report to the house, its sittings are assumed to have been closed; and if further proceedings were desired, it would be necessary to revive the committee.

When a committee has not completed its inquiries before the end of the session, it is a frequent practice to re-appoint it, at the next meeting of Parliament.[2] A committee re-appointed cannot report the evidence taken before the committee in the previous session except as a paper in the appendix. To obviate that difficulty, on the 29th April 1852, the house ordered the evidence of the previous session to be laid before them; and when presented it was referred to the committee, with leave to report it forthwith.[3]

Publication of draft reports.

There have been instances in which the chairman of a committee, after the committee had reported, has published his own draft report, which had not been accepted, accompanied, in some cases, by additional arguments and illustrations;[4] and no objection had been urged against such a publication: but on the 21st July 1858, it was brought to the notice of the house, that the chairman of a committee had published and circulated, in the form of a parliamentary proceeding, a draft report which he had submitted to the committee, but which had not been entertained by them, accompanied by observations reflecting upon the conduct and motives of members of that committee. No formal vote was sought for on this occasion: but it was generally agreed that the proceeding was irregular, and contrary to the usage of Parliament.[5]

Reports cancelled.

In one case the report of a committee had been made, and ordered to be printed, in the previous session, but was, in

[1] 189 Hans. Deb. 3rd Ser. 604.

[2] 132 Com. J. 102. 135; 134 Ib. 17. 52; 135 Ib. 71.

[3] Property Tax Committee, 107 Com. J. 177.

[4] Agricultural Distress, 1836. Income Tax, 1861.

[5] 151 Hans. Deb. 3rd Ser. 1867.

fact, prepared by the chairman after the prorogation. A committee was appointed to consider the circumstances under which the document purporting to be the report of the committee had been ordered to be printed; and on their report being received, the house resolved, "That the document was not a report which had been agreed to by the said committee, and that the said document be cancelled."[1] On the 28th April 1863, notice being taken that the analysis of evidence appended to the report of the select committee on Sewage of Towns in the last session, comprised observations and opinions not within the scope of such analysis, it was ordered to be cancelled.[2]

Reports of committees.

When the evidence has not been reported by a committee, it has sometimes been ordered to be laid before the house.[3] It is usual, however, to present the report, evidence, and appendix together, which are ordered to lie upon the table, and to be printed. In presenting a report, the chairman appears at the bar, and is directed by the Speaker to bring it up. On the 18th May 1865, it was ordered by the Lords, "That any report presented by a select committee shall not merely be laid upon the table of the house, but shall be printed and circulated, and notice shall be given on the minutes of the day on which it may be intended to take the report into consideration.[4]

Any appropriate motion may be founded upon a report: as that it be recommitted;[5] or recommitted, with minutes of proceedings, so far as they relate to a certain paragraph;[6] or recommitted, and the order of reference amended;[7] or taken into consideration on a future day;[8] or communicated

[1] 102 Com. J. 254. 682. Hans. Deb. 16th June 1847.

[2] 118 Com. J. 189.

[3] 88 Ib. 671; 105 Ib. 637, &c.

[4] 97 Lords' J. 208.

[5] 76 Com. J. 213; 82 Ib. 318; 88 Ib. 583; 92 Ib. 478; Azeem Jah (forgery of signatures to petitions, 1865), 120 Ib. 252.

[6] Privilege (Mr. Gray's Imprisonment, 1882), the previous question having been put in the committee.

[7] 70 Com. J. 430.

[8] 86 Ib. 167.

to the Lords at a conference.[1] In 1850, the house, instead of ordering the evidence taken before a committee to be printed, referred it "to the secretary of state for the colonies, for the consideration of her Majesty's government."[2] Notice has been taken of certain errors in a statement comprised in the appendix to a report, and a corrected statement ordered to be laid before the house.[3]

[1] 91 Com. J. 9.
[2] 105 Ib. 661 (Ceylon committee).
[3] 103 Ib. 621.

CHAPTER XV.

WITNESSES: MODES OF SUMMONS AND EXAMINATION: ADMINISTRATION OF OATHS: EXPENSES.

How summoned by the Lords.

All witnesses who are summoned to give evidence before the House of Lords, or any committee of the whole house, are ordered to attend at the bar on a certain day, to be sworn; and they are served with the order of the house, signed by the clerk of the Parliaments. And if a witness be in the custody of a keeper of a prison, the keeper is ordered to bring him up in custody, in the same manner.[1] If the house have reason to believe that a witness is purposely keeping out of the way, to avoid being served with the order, it has been usual to direct that the service of the order at his house shall be deemed good service.[2] If, after such service of the order, the witness should not attend, he is ordered to be taken into custody:[3] but the execution of this order is sometimes stayed for a certain time.[4] If the officers of the house do not succeed in taking the witness into custody by virtue of this order, the last step taken is to address the Crown to issue a proclamation, with a reward for his apprehension.[5]

Peers, &c. how summoned.

When the evidence of peers, peeresses, or lords of Parliament has been required, the Lord Chancellor has been ordered to write letters to them, desiring their attendance to be examined as witnesses:[6] but they ordinarily attend and give evidence without any such form.

Witnesses summoned by the Commons.

When the attendance of a witness is desired, to be examined at the bar, by the House of Commons, or by a committee of the whole house, he is simply ordered to attend at a stated

[1] 68 Lords' J. 513. 558.
[2] 66 Ib. 295. 358.
[3] Ib. 400.
[4] Ib. 358.
[5] Ib. 441, 442.
[6] Ib. 144.

time;[1] and the order, signed by the clerk of the house, is served upon him personally, if in or near London; and if at a distance, it is forwarded to him by the serjeant-at-arms, by post, or, in special cases, by a messenger. If he should be in the custody of the keeper of any prison,[2] or sheriff,[3] the Speaker is ordered to issue his warrant, which is personally served upon the keeper, or sheriff, by a messenger of the house, and by which he is directed to bring the witness in his custody to be examined. If the order for the attendance of a witness be disobeyed, he may be ordered to be sent for in custody of the serjeant-at-arms, and Mr. Speaker be ordered to issue his warrant accordingly;[4] or he may be declared guilty of a breach of privilege, and ordered to be taken into the custody of the serjeant.[5] Any person, also, who aids or abets a witness in keeping out of the way, is liable to a similar punishment.[6] When the serjeant has succeeded in apprehending such persons, they have generally been sent to Newgate for their offence.[7]

If a witness should be in custody, by order of the other house, his attendance is secured by a message, desiring that he may attend in the custody of the black rod, or the serjeant-at-arms, as the case may be, to be examined.[8]

By select committees.

The attendance of a witness to be examined before a select committee is ordinarily secured by an order signed by the chairman, by direction of the committee: but if any person should neglect to appear when summoned in this manner, his conduct is reported to the house, and an order is immediately made for his attendance at the bar of the house. If, in the meantime, he should appear before the committee, it is usual to discharge the order for his attendance:[9] but if

[1] 78 Com. J. 240; 91 Ib. 338.

[2] 10 Ib. 476; 82 Ib. 464; 86 Ib. 795; 93 Ib. 210; 96 Ib. 193; 97 Ib. 227; 99 Ib. 89; 126 Ib. 228.

[3] 93 Ib. 353.

[4] 95 Ib. 58. See, also, as to the form of the warrant, *supra*, p. 187 (Howard *v.* Gosset).

[5] 106 Com. J. 48, &c.

[6] 90 Ib. 330.

[7] Ib. 343, 344.

[8] 11 Ib. 296. 305; 15 Ib. 376; 19 Ib. 461, 462; 21 Ib. 356. 926.

[9] 91 Ib. 352.

On private bills.

he still neglect to appear, he is dealt with as in the other cases already described. The attendance of a witness before a committee on a private bill, is generally secured by the promoters and opponents themselves, without any order or other process: but if a witness should decline to attend at the instance of the parties, his attendance is enforced by an order of the house.[1]

Witnesses absconding.

When witnesses have absconded, and cannot be taken into custody by the serjeant-at-arms, addresses have been presented to the Crown for the issue of proclamations, with rewards for their apprehension.[2]

Attendance of members, how required.

If the evidence of a member be desired by the house, or a committee of the whole house, he is ordered to attend in his place on a certain day.[3] But when the attendance of a member is required before a select committee, it is the custom to request him to come, and not to address a summons to him in the ordinary form. The proper course to be adopted by committees, in reference to members, has been thus laid down by two resolutions of the Commons, of the 16th March 1688:

"That if any member of the house refuse, upon being sent to, to come to give evidence or information as a witness to a committee, the committee ought to acquaint the house therewith, and not summon such member to attend the committee."

"That if any information come before any committee that chargeth any member of the house, the committee ought only to direct that the house be acquainted with the matter of such information, without proceeding further thereupon."[4]

There has been no instance of a member persisting in a refusal to give evidence: but members have been ordered by the house to attend select committees.[5] In 1731, Sir Archibald Grant, a member, was committed to the custody of the serjeant-at-arms, "in order to his forthcoming to abide the orders of the house," and was afterwards ordered to be

[1] 110 Com. J. 267; 112 Ib. 263, &c.
[2] 75 Ib. 419; 82 Ib. 345, &c.
[3] 61 Ib. 386; 64 Ib. 17; 65 Ib. 21.
[4] 10 Ib. 51.
[5] 19 Ib. 403.

brought before a committee, from time to time, in the custody of the serjeant.[1] On the 28th June 1842, a committee reported that a member had declined complying with their request for his attendance.[2] A motion was made for ordering him to attend the committee, and give evidence: but the member having at last expressed his willingness to attend, the motion was withdrawn.[3] The customary courtesy to members was also observed, in securing their attendance as witnesses before election committees; and warrants were not therefore issued by the Speaker to summon them to attend, although he had a statutory power to issue them.

Attendance of members of the other house.

If the attendance of a peer should be desired, to give evidence before the house, or any committee of the House of Commons,[4] the house sends a message "to the Lords, to request that their lordships will give leave to the peer in question to attend, in order to his being examined" before the house, or a committee, as the case may be, and stating the matters in relation to which his attendance is required. If the peer should be in his place when this message is received, and he consents, leave is immediately given for him to be examined, if he think fit. If not present, a message is returned on a future day, when the peer has, in his place, consented to go. Exactly the same form is observed by the Lords, when they desire the attendance of a member of the House of Commons. A message is also sent requiring the attendance of a member to be examined, when the Lords are sitting on the trial of an impeachment;[5] but if the Lords be sitting as a court of criminal judicature on the trial of a peer, they will *order* the attendance of a member of the House of Commons without a message.[6] Whenever the attendance of a member of the other house is desired by a committee, it is advisable to give him private intimation, and to learn that he is willing

[1] 21 Com. J. 851, 852.

[2] 97 Ib. 438.

[3] Ib. 438. 453. 458. See also Report of Precedents, Ib. 449.

[4] 82 Ib. 394; 88 Ib. 173. 179.

[5] 12 Lords' J. 84; 16 Ib. 33. 747.

[6] 3 Hatsell, 21, *n.*

to attend, before a formal message is sent to request his attendance. But these formalities, though occasionally adopted,[1] are not usual or necessary in the case of private bills, where the attendance of witnesses is voluntary.[2] If a member should be in custody when leave is given him to attend the House of Lords, the serjeant-at-arms is ordered to permit him to attend, in his custody.[3]

Officers of either house.

The same ceremony is maintained between the two houses in requesting the attendance of officers connected with their respective establishments: but when leave is given them to attend, the words "if they think fit," which are used in the case of members, are omitted in the answer.[4]

Peers, not being lords of Parliament.

Whether a peer, who is not a lord of Parliament, may be ordered to attend in the same form as a commoner, is a matter upon which the two houses have not agreed. On the 3rd May 1779, the Earl of Balcarras, of the peerage of Scotland, was ordered to attend the House of Commons.[5] On the 5th June 1806, the house ordered the attendance of Lord Teignmouth,[6] of the peerage of Ireland, and he attended accordingly: but the House of Lords, at a conference, took exception to the mode of summons, and stated, "That it doth not appear that there is any other precedent but that of the Earl of Balcarras in 1779, in which either house of Parliament, desiring information of a peer of the realm, has required his attendance for that purpose, by an order of such house." To this, however, the Commons replied, that Lord Teignmouth "is not a lord of Parliament, nor hath the right and privilege of sitting in the House of Lords, nor is entitled to any of the privileges thereupon depending." The Lords continued to

[1] Liverpool Docks Bill (Lord Harrowby), 103 Com. J. 438; Salford Borough Bill, 108 Ib. 434. Thames Embankment Approaches Bill, 1873 (Duke of Northumberland). In this case the attendance of the Duke was desired by the committee itself, and not by the parties.

[2] 3 Hatsell, 21. See *supra*, p. 474.

[3] 11 Com. J. 296. 305; 15 Ib. 376; (Mr. W. S. O'Brien), 101 Ib. 603.

[4] 103 Ib. 658; 112 Ib. 61; 113 Ib. 255.

[5] 37 Ib. 366.

[6] 61 Ib. 374.

maintain the privilege of peerage as apart from the privilege of Parliament, and resolved, "That it is the undoubted privilege of all the peers of the United Kingdom of Great Britain and Ireland, except such as may have waived their privilege of peerage by becoming members of the Commons' House of Parliament, to decline, if they so think fit, to attend the House of Commons, for the purpose of giving information upon inquiries instituted by the said house, and that the said house has no right to enforce such attendance; and that it is the incumbent duty of this house to maintain and uphold such the privilege of all the peers aforesaid, and to protect them against any attempt to enforce their attendance on the House of Commons, contrary to such privilege."[1] But this resolution was not communicated to the Commons.[2]

Peers under accusation.

In 1805, the Commons having sent a message to the Lords, desiring the attendance of Viscount Melville, to be examined before the committee of Naval Inquiry, the Lords acquainted them, at a conference, that the course adopted by the Lords "has been to permit their members, on their own request, to defend themselves in the House of Commons on points on which the Commons have not previously passed criminating resolutions against them, and to give evidence before the house or any committee thereof on those points only on which no matter of accusation is depending against them;" and within these limitations they gave leave to Lord Melville to attend,[3] though the Commons did not think fit to examine him.[4]

[1] 45 Lords' J. 812.

[2] See 2 Hatsell, App. 9. 2 Lord Colchester's Diary, 69. 73; 1st June 1825. "The chancellor, by Mr. Cowper's advice, thought it necessary to have leave given by the house for the Archbishop of Dublin's attendance before the Commons' committee, although, not being on the rota, he has no seat in the House of Peers, or duty to discharge there." 3 Lord Colchester's Diary, 394.

[3] 60 Com. J. 265. 1 Lord Colchester's Diary, 558; and see 4 Hatsell, 485.

[4] 60 Com. J. 272. By a Standing Order of the 20th January 1673, "No lord shall either go down to the House of Commons, or send his

Inquiry to have been previously ordered.

Before any such message is sent to the other house, or any witness is otherwise summoned, it is right that the house should previously have directed an inquiry into the matter upon which evidence is sought.[1]

Mode of examination.

These being the various modes of securing the attendance of witnesses to give evidence before either house of Parliament, the mode of examination is next to be considered. In

Lords.

the House of Lords, every witness is sworn at the bar who is about to be examined by the house, or by a committee of the whole house. But lords of Parliament, and peers not being lords of Parliament, and peeresses, are sworn at the table of the house, by the lord chancellor.[2] An Irish peer, being a member of the House of Commons, is sworn at the bar, as a Commoner.[3] The Lords formerly claimed the privilege of being examined upon honour, instead of upon oath. On the 22nd May 1732, the committee of privileges reported that the Lords should be examined in all courts, upon protestation of honour only, and not upon the common oath;[4] and in an earlier instance the house had declared a master in chancery guilty of a breach of privilege for having refused to receive a protestation of honour by Lord Plymouth:[5] but this supposed privilege has long since been abandoned, and peers are everywhere examined upon oath, even in the House of Lords itself. If counsel be engaged in an inquiry at the bar, the

answer in writing, or appear by counsel, to answer any accusation there, upon penalty of being committed to the black rod, or to the Tower, during the pleasure of this house."—Lords' S. O. No. 59.

[1] On the 31st March 1813, a motion being made for a message to the Lords for the attendance of Lord Moira to give information concerning the Princess of Wales, the Speaker desired the attention of the house to the proceeding as novel and unparliamentary; "the rule being, according to all precedents, not to desire the attendance of witnesses of any sort, excepting upon a matter pending in the house, and which the house had previously resolved to examine." The motion was superseded by reading the order of the day. 68 Com. J. 364. 2 Lord Colchester's Diary, 434.

[2] 38 Lords' J. 68, 69. Lords' J. 14th July 1845; 15th June 1855.

[3] Viscount Palmerston, 16th July 1844.

[4] 24 Lords' J. 136.

[5] 14 Ib. 18.

witnesses are examined by them, and by any lord who may desire to put questions. When counsel are not engaged, the witnesses are examined by the Lords generally. A lord of Parliament is examined in his place; and peers not being lords of Parliament, and peeresses, have chairs placed for them at the table.[1]

Oaths administered by Lords' committees.

Formerly, every witness about to be examined before a select committee, was required to attend previously at the bar to be sworn. This practice, however, was attended with much inconvenience, and it was repeatedly suggested that it should be altered by statute. On the 11th June 1857, the Lords applied a partial remedy, by resolving "that select committees, in future, shall examine witnesses without their having been previously sworn, except in cases in which it may be otherwise ordered by the house."[2] And in 1858, a more complete remedy was provided by statute 21 & 22 Vict. c. 78, by which "any committee of the House of Lords may administer an oath to the witnesses before such committee." Since 1857, however, witnesses have only been sworn upon inquiries of a special character.

Committees.

In select committees of the Lords, witnesses are placed in a witness-box or at the short-hand writer's table, to be examined: but members of the House of Commons are allowed a seat near the table, where they sit uncovered.

Oaths.

False evidence before the Lords, being upon oath, has always rendered a witness liable to the penalties of wilful and corrupt perjury; and prevarication, or other misconduct of a witness, is also punishable as a contempt.[3]

By the laws of England, the power of administering oaths has been considered essential to the discovery of truth: it has been entrusted to small debt courts, and to every justice of the peace: but until 1871 it was not enjoyed by the

[1] 25 Lords' J. 303. See also Ib. 100; 38 Ib. 69; 46 Ib. 172. 189, where the judges of the Court of Justiciary in Scotland had chairs set for them at the bar, to be examined.

[2] 89 Lords' J. 60; Report on Oaths of Witnesses, 1857 (15).

[3] 48 Lords' J. 371, &c.

House of Commons, the grand inquest of the nation. From what anomalous cause, and at what period, this power, which must have been originally inherent in the High Court of Parliament, was retained by one branch of it, and severed from the other, cannot be satisfactorily established: but, even while the Commons were contending most strenuously for their claim to be a court of record, they did not advance any pretension to the right of administering oaths. The two houses, in the course of centuries, have appropriated to themselves different kinds of judicature: but the one has exercised the right of administering oaths without question, while the other, except during the Commonwealth,[1] never asserted it.

Expedients of the Commons.

During the 17th century, the Commons were evidently alive to the importance of this right, and anxious to exercise it: but, for reasons not explained, they admitted, by various acts, that the right was not inherent in them; and resorted to various expedients in order to supply the defect in their own authority.[2] 1. They selected some of their own members who were justices of the peace for Middlesex, to administer oaths in their magisterial capacity,—a practice manifestly irregular, if not illegal, since justices may only administer oaths in investigating matters within their own jurisdiction, as limited by law.[3] 2. They sent witnesses to be examined by one of the judges.[4] 3. They sought to aid their own inquiries by having their witnesses sworn at the bar of the House of Lords;[5] and by examining witnesses on oath before joint committees of both houses;[6] in neither of which expedients were they supported by the Lords.

To examine in the most solemn manner.

All these methods of obtaining the sanction of an oath to evidence taken at their instance, were so many distinct admissions of their own want of authority; but in the 18th

[1] See 6 Com. J. 214. 451; 7 Ib. 55. 287. 484, &c. See also 2 Ib. 455. See further the author's evidence before the Committee on Witnesses (House of Commons), in 1869.

[2] 2 Hatsell, 151 *et seq.*

[3] 9 Com. J. 521; 10 Ib. 682.

[4] 10 Ib. 415. 417.

[5] 8 Ib. 325. 327.

[6] 2 Ib. 502; 8 Ib. 647. 655.

century a practice of a different character arose, which appeared to assume a right of delegating to others a power which they had not claimed to exercise themselves. On the 27th January 1715, they empowered justices of the peace for Middlesex to examine witnesses in the most solemn manner before a committee of secrecy;[1] and the same practice was resorted to in other cases.[2] On the 12th January 1720, a committee was appointed to inquire into the affairs of the South Sea Company, and the witnesses were ordered to be examined before them in the most solemn manner, without any mention of the persons by whom they were to be sworn.[3] Between this time and 1757, several similar instances occurred:[4] but from that year the most important inquiries were conducted without any attempt to revive so anomalous and questionable a practice. And at length, in 1871, in pursuance of the recommendations of a select committee of 1869, an act was passed, empowering the House of Commons and its committees to administer oaths to witnesses, and attaching to false evidence the penalties of perjury.[5] By Standing Orders of the 20th February 1872, made pursuant to this act, oaths are administered to witnesses, before the house or a committee of the whole house, by the clerk at the table; and before a select committee, by the chairman, or by the clerk attending the committee. It is not usual, however, for select committees to examine witnesses upon oath, except upon inquiries of a judicial or other special character.[6] It has been held that a joint committee of the two houses has the same power of swearing witnesses as committees sitting separately, in the usual manner.[7] The power

Power of administering oaths conferred by statute, 1871.

Courts of referees.

[1] 18 Com. J. 353.

[2] 18 Ib. 596; 19 Ib. 301.

[3] 19 Ib. 403.

[4] 21 Ib. 851, 852; 2 Hatsell, 151–157.

[5] 34 & 35 Vict. c. 83.

[6] The Committee on Foreign Loans in 1875 was the first to examine witnesses upon oath, under the Act. They were also so examined in 1879 by the Committee on Privilege (Tower High Level Bridge), and the Committee on Mr. Goffin's certificate.

[7] Railway Amalgamation Bills Committee, 1873.

of administering oaths to witnesses has also been extended to the courts of referees.[1] By the Evidence Amendment Acts, 1869 and 1870, where a judge or person having authority to administer an oath is satisfied that the taking of an oath is not binding upon the conscience of a witness, he may make a promise and declaration.

False evidence a breach of privilege.

To secure respect to the authority of the house in its inquiries, two resolutions are agreed to at the beginning of each session:—

1. "That if it shall appear that any person hath been tampering with any witness, in respect of his evidence to be given to this house, or any committee thereof, or directly or indirectly hath endeavoured to deter or hinder any person from appearing or giving evidence, the same is declared to be a high crime and misdemeanor; and this house will proceed with the utmost severity against such offender."

2. "That if it shall appear that any person hath given false evidence in any case before this house, or any committee thereof, this house will proceed with the utmost severity against such offender."

The house has rarely failed to act up to the spirit of these resolutions with strictness and severity, and the journals abound with cases in which witnesses have been punished by commitment to the serjeant-at-arms, and to Newgate, for prevaricating or giving false testimony, or suppressing the truth; for refusing to answer questions, or to produce documents in their possession.[2] If any witness be guilty of such misbehaviour before a committee of the whole house, or a select committee, the circumstance is reported to the house, by whom the witness is dealt with.[3]

Protection to witnesses.

Short-hand writers.

While the house punishes misconduct with severity, it is careful to protect witnesses from the consequences of their evidence, given by order of the house. On the 26th May 1818, the Speaker called the attention of the house to the

[1] 30 & 31 Vict. c. 136.

[2] Orange Lodges (Colonel Fairman), 90 Com. J. 504. 520. 564; 103 Ib. 258; 112 Ib. 354. See also "Committees," "Complaints," "House," "Elections," and "Witnesses," in the General Journal Indexes.

[3] Penryn Election Bill, 1827; 82 Com. J. 473.

case of the King *v.* Merceron,[1] in which the short-hand writer of the house[2] was examined without previous leave, and it was resolved, *nem. con.*,

"That all witnesses examined before this house, or any committee thereof, are entitled to the protection of this house, in respect of anything that may be said by them in their evidence;" and "That no clerk or officer of this house, or short-hand writer employed to take minutes of evidence before this house, or any committee thereof, do give evidence elsewhere, in respect of any proceedings or examination had at the bar, or before any committee of this house, without the special leave of the house."[3]

Whenever the parties to a suit desire to produce such evidence, or any other document in the custody of officers of the house, in a court of law, they petition the house, praying that the proper officer may attend, and produce it.[4] During the recess, however, it has been the practice for the Speaker, in order to prevent delays in the administration of justice, to allow the production of minutes of evidence and other documents, on the application of the parties to a private suit. But should the suit involve any question of privilege, especially the privilege of a witness, or should the production of the document appear, on other grounds, to be a subject for the discretion of the house itself, he will decline to grant the required authority. It has been held by the courts that the

Evidence of members in courts.

[1] 2 Starkie, N. P. Cases, 366.

[2] It appears that short-hand writers were first employed by the Lords in 1786, upon the slave-trade inquiries; and by the Commons in 1792, on the Eau Brink Drainage. In 1802, they were introduced into all election committees by Mr. Michael Angelo Taylor's Bill. 3 Lord Colchester's Diary, 332.

[3] 73 Com. J. 389. But, on the 7th Feb. 1873, it was ruled (privately) that an order of the house was not required to enable the short-hand writer of the house, who had attended the trial of the Galway election before Mr. Justice Keogh (under the Election Petitions and Corrupt Practices Act 1868) to attend the trial of certain prosecutions at Dublin, for undue influence at that election. By the 24th section of that Act, the short-hand writer of the House of Commons is required to take notes of the evidence before the election judge, but not as an officer of the house; and in this case it was only two of his deputies whose attendance was required.

[4] 106 Com. J. 212. 277; 107 Ib. 291, &c.

evidence of members, of proceedings in the House of Commons, is not to be received without the permission of the house, unless they desire to give it;[1] and, according to the usage of Parliament, no member is at liberty to give evidence elsewhere in relation to any debates or proceedings in Parliament, except by leave of the house of which he is a member.[2]

Indemnity to witnesses.

The protection afforded to witnesses by the privileges of Parliament against suits and molestation, on account of their evidence, has been noticed elsewhere;[3] and on extraordinary occasions, where further protection has been deemed necessary to elicit full disclosures, acts have been passed to indemnify witnesses from all the penal consequences of their testimony.[4]

Examined at the bar.

When a witness is examined by the House of Commons, or by a committee of the whole house,[5] he attends at the bar, which is then kept down. If the witness be not in custody, the mace remains upon the table; when, according to the strict rule of the house, the Speaker should put all the questions to the witness, and members should only suggest to him the questions which they desire to be put:[6] but, for the sake of avoiding the repetition of each question, members are usually permitted to address their questions directly to the witness, which, however, are still supposed to be put through the Speaker.[7] When a witness is in the custody of the serjeant-at-arms, or is brought from any prison in custody, it is the usual, but not the constant, practice for the serjeant to stand with the mace at the bar. When the mace is on the serjeant's shoulder, the Speaker has the sole management; and no member may speak, or even suggest questions to the chair.[8] In such cases, therefore, the questions to be proposed

[1] Chubb *v.* Salomons, 3 Carrington & Kirwan, 75.

[2] 18 Hans. Deb. N.S. 968—974.

[3] *Supra*, p. 161.

[4] Election Compromises, 1842; 5 & 6 Vict. c. 31. Sudbury Disfranchisement, 1843; 6 & 7 Vict. c. 11. Gaming Transactions, 1844; 7 & 8 Vict. c. 7.

[5] 2 Hatsell, 140: but see 2 Com. J. 26.

[6] See 1 Com. J. 536.

[7] 146 Hans. Deb. 3rd Ser. 97; 150 Ib. 1063.

[8] 2 Hatsell, 140.

should either be put in writing, by individual members, or settled upon motions in the house, and given to Mr. Speaker before the prisoner is brought to the bar.[1] If a question be objected to, or if any difference should arise in regard to the examination of a witness, he is directed by the Speaker to withdraw, before a motion is made, or the matter is considered. In committee of the whole house, any member may put questions directly to the witness. Where counsel are engaged, the examination of witnesses is mainly conducted by them, subject to the interposition of questions by members; and where any question arises in regard to the examination, the parties, counsel, and witnesses are directed to withdraw. Whenever witnesses are examined at the bar, the short-hand writer of the house is in attendance there, and takes minutes of their evidence.

Members, lords of Parliament, &c.

Members of the house are always examined in their places;[2] and peers, lords of Parliament, the judges, and the lord mayor of London, have chairs placed for them within the bar, and are introduced by the serjeant-at-arms.[3] Peers sit down covered, but rise and answer all questions uncovered. The judges and the lord mayor are told by the Speaker that there are chairs to repose themselves upon; which is understood, however, to signify that they may only rest with their hands upon the chair backs.[4]

When a peer is examined before a select committee, it is the practice to offer him a chair at the table, next to the chairman; where he may sit and answer his questions covered.

[1] 2 Hatsell, 142, and *n*.

[2] "Agreed that members ought not to be brought to the bar unless they are accused of any crime;" 10 Com. J. 46. On the 12th January 1768, Wilkes being brought to the bar in custody, objected that he could not appear there without having taken the oaths: but his objection was overruled.

[3] The same forms are observed when a peer desires to address the house, as in the case of Viscount Melville, 11th June 1805; 5 Hans. Deb. 250; and Duke of Wellington, 1st July 1814; Abbot's Speeches, 84. 2 Lord Colchester's Diary, 6-8.

[4] 2 Hatsell, 149; where all these forms are minutely described.

Expenses of witnesses.

When a witness is summoned at the instance of a party, his expenses are defrayed by such party: but when summoned for any public inquiry, to be examined by the house or a committee, his expenses are paid by the Paymaster-General, under orders signed by the clerk of the Parliaments, the clerk of the House of Commons, or by chairmen of committees in either house. In order to check the expenses of witnesses examined before committees, the House of Commons have adopted certain regulations, by which the following particulars are to be annexed in a tabular form, to the printed proceedings of every committee: 1. The name of the witness; 2. His profession or condition; 3. Total number of days in London; 4. Number of days under examination, or acting specially under the orders of the committee; 5. Expenses of journey to London and back; 6. Expenses in London;[1] 7. Total expenses allowed to each witness, and to all collectively. No witness residing in or near London is allowed any expenses, except under some special circumstances of service to the committee.[2] Every witness should report himself to the committee clerk on his arrival in London, or he will not be allowed his expenses for residence, prior to the day of making such report.

The Lords have appointed a select committee to inquire into the expenses that should be allowed to witnesses, and have received their report in detail, before the items were agreed to.[3]

[1] A witness is allowed his actual travelling expenses, and for every day or part of a day that he is necessarily kept from home, at the following rates, viz.: a barrister, physician, civil engineer or architect, 3*l.* 3*s.*; a solicitor, surgeon, or land surveyor, 2*l.* 2*s.*; a clergyman, or non-professional gentleman, 1*l.* 1*s.*; a mechanic, &c., 10*s.* Special allowances have also been made to defray the expenses of official substitutes.

[2] See Report, 1840, No. 555.

[3] 62 Lords' J. 910.

CHAPTER XVI.

COMMUNICATIONS BETWEEN THE LORDS AND COMMONS. MESSAGES AND CONFERENCES; JOINT COMMITTEES, AND COMMITTEES COMMUNICATING WITH EACH OTHER.

Different modes of communication.

THE two houses of Parliament have frequent occasion to communicate with each other, not only in regard to bills which require the assent of both houses, but with reference to other matters connected with the proceedings of Parliament. There are four modes of communication: viz. 1. By message; 2. By conference; 3. By joint committees of Lords and Commons; and, 4. By select committees of both houses communicating with each other. These will each be considered in their order.

Messages.

1. A message is the most simple and frequent mode of communication; it is daily resorted to for sending bills from one house to another; for requesting the attendance of witnesses; for the interchange of reports and other documents; and for communicating all matters of an ordinary description, which occur in the course of parliamentary proceedings.[1] It is also the commencement of the more important modes of intercourse, by means of conferences and joint committees. A very important change in the form of sending messages was introduced in 1855; but as the former practice is still recognized by the orders of both houses, and might possibly be revived, it may be convenient to describe it. Prior to 1847, the Lords ordinarily sent messages by the masters in chancery, their attendants; and on special occasions, by their

From the Lords to the Commons.

[1] On the 17th Feb. 1866, the Lords sent a message to the Commons, requesting them to continue sitting for some time, to which the latter agreed, the object being to insure the passing of the Habeas Corpus Suspension (Ireland) Bill on that day.

assistants, the judges; while the Commons always sent a deputation of their own members.[1]

By the judges.

Bills relating to the Crown or royal family were sent to the Commons by two judges:[2] but when the judges were on circuit, or for other causes were not in attendance, such bills were sent by one judge and one master in chancery.[3] Whenever the Lords sent a message otherwise than by their usual messengers, an explanation was sent, and the Commons acquiesced in the reasons assigned, "trusting that the same will not be drawn into precedent for the future."[4]

By masters in chancery and others.

Messages from the Commons to the Lords.

The Commons sent messages to the Lords by one of their own members (generally the chairman of the committee of ways and means, or a member who had charge of a bill), who, until 1847, was required to be accompanied by at least seven others. Eight was formerly the common number which formed a quorum of a select committee, and was probably for this reason adopted as the number for carrying a message to the House of Lords.[5]

Much inconvenience had been sustained by requiring so many messengers to communicate the most ordinary matters; more especially as each bill formed the subject of a distinct message, accompanied by all the customary formalities; and, on the 12th July 1847, the Lords communicated the following resolutions, at a conference:

"1st. That the Lords are willing to receive from the Commons *in one message*, all Commons' bills when first brought up to this house; all Lords' bills returned from the House of Commons without any amendments made thereto, and all Commons' bills returned therefrom with the Lords' amendments thereto agreed to, without any amendment; a list of such bills, with a statement of the assent of the Commons thereto, being brought by the messengers from the House of Commons, and delivered together with the bills so brought up.

"2nd. That whereas, by custom heretofore, all messages from the House of Commons to the House of Lords have been attended by eight

[1] Lords' S. O. No. 88.
[2] 80 Com. J. 573; 86 Ib. 514. 805.
[3] 86 Ib. 713.
[4] 17 Parl. Hist. 423; 72 Com. J. 5; 85 Ib. 652; 88 Ib. 727; 90 Ib. 650.
[5] See also Chapter XVIII., on Public Bills.

members of the House of Commons; and whereas the attendance of so many may occasionally be inconvenient to the members of the said house, the Lords desire to communicate to the Commons their willingness to receive such messages when brought up by *five* members only." [1]

In return for this concession the Commons resolved,

"That the Commons should be willing to receive messages from the Lords brought by one master in chancery instead of two masters, as heretofore." [2]

And without any express resolution they have since received a message by one judge, instead of two, bringing the agreement of the Lords to a bill relating to the royal family.[3] But in 1857, the Lords returned the Princess Royal's Annuity Bill by two judges; in 1861 they returned the Princess Alice's Annuity Bill, and in 1863 the Prince of Wales's Annuity Bill, in the same manner. This unexpected revival of an obsolete custom proved less conducive to dignity than to ridicule.[4] In 1866, the Princess Mary of Cambridge's Annuity Bill was returned by the clerk.[5] In 1871, the message communicating the agreement of the Lords to the Princess Louise's Annuity Bill was brought by two judges.[6] But in later cases the messages have been brought, in the usual way, by the clerk.[7]

In 1855, a much greater change was introduced, mainly caused by the abolition of the office of master in chancery. On the 24th May, the following resolutions, which had been communicated by the Lords, at a conference, were agreed to by the Commons:

"That, in addition to the present practice with regard to messages between the houses, one of the clerks of either house may be the bearer

[1] 102 Com. J. 861.

[2] Ib. 868.

[3] Duke of Cambridge's Annuity Bill, 1850; 105 Com. J. 661. Princess Helena's Annuity Bill, 1866; 121 Com. J. 164.

[4] On this last occasion, a ceremony, once regarded as solemn, provoked shouts of laughter.

[5] 121 Com. J. 410.

[6] 126 Ib. 57.

[7] Duke of Connaught's Establishment Bill, 1878; 133 Com. J. 405. Duke of Albany's Establishment Bill, 1882; 137 Com. J. 150.

of messages from the one to the other; and that messages so sent be received at the bar by one of the clerks of the house to which they are sent, at any time whilst it is sitting or in committee, without interrupting the business then proceeding." [1]

Except in the rare instances just referred to, both houses have since sent their messages in this convenient and suitable manner; and it will be unnecessary to describe the ceremonies with which messengers were formerly received in both houses.[2]

General character of a conference.

2. A conference is a mode of communicating important matters by one house of Parliament to the other, more formal and ceremonious than a message, and sometimes better calculated to explain opinions and reconcile differences. By a conference both houses are brought into direct intercourse with each other, by deputations of their own members; and so entirely are they supposed to be engaged in it, that while the managers are at the conference, the deliberations of both houses are suspended.

Subjects for a conference.

Either house may demand a conference upon matters which, by the usage of Parliament, are allowed to be proper occasions for such a proceeding: as, for example, 1. To communicate resolutions or addresses to which the concurrence of the other house is desired.[3] 2. Concerning the privileges of Parliament.[4] 3. In relation to the course of proceeding in Parliament.[5] 4. To require or communicate statements of facts on which bills have been passed by the other house.[6] 5. To offer reasons for disagreeing to or insisting on amendments made by one house to bills passed by the other.

When to be demanded.

On all these and other similar matters it is regular to demand a conference: but as the object of communications of this nature is to maintain a good understanding and

[1] 110 Com. J. 254.

[2] See 3rd edition of this work, p. 338.

[3] 87 Com. J. 421; 88 Ib. 488; 89 Ib. 232; 95 Ib. 422; 112 Ib. 363, &c.

[4] 9 Ib. 344.

[5] 89 Ib. 220; 90 Ib. 656; 91 Ib. 225; 102 Ib. 861.

[6] 19 Ib. 630.

co-operation between the houses, it is not proper to use them for interfering with and anticipating the proceedings of one another, before the fitting time. Thus, while a bill is pending in the other house, it is irregular to demand a conference concerning it; and although this rule was not formerly observed with much strictness, it was distinctly declared by the House of Commons, in 1575, to be "according to its ancient rights and privileges, that conference is to be required by that court which, at the time of the conference demanded, shall be possessed of the bill, and not of any other court."[1] The convenience and propriety of this rule are so obvious that it has now, for a long course of years, been invariably observed, with regard not only to bills, but also to resolutions that have been communicated. For instance, if the Commons have communicated a resolution to the Lords, they must wait until some answer has been returned, and not demand another conference upon the same subject. When the Lords are prepared with their answer, it is their turn to demand another conference.

Purpose to be stated.

In demanding a conference, the purpose for which it is desired should be explained, lest it should be on a subject not fitting for a conference; as concerning a bill in possession of the house of whom the conference is demanded, or any other interference with the independent proceedings of the other house; in which case a conference might properly be declined. Thus, on the 2nd August 1641, the Commons declined a conference which had been demanded "without any expression of the subject or matter of that conference, which is contrary to the constant course of either house."[2] And on the 22nd March 1678, the Commons, instead of agreeing to a conference, sent a message to acquaint the Lords "that it is not agreeable to the usage and proceedings of either house to send for a conference without expressing the subject-matter of that conference."[3] On the 29th October

[1] 1 Com. J. 114. [2] 2 Ib. 581. [3] 9 Ib. 555.

1795, the Lords demanded a conference (on the attack upon his Majesty that day) without stating the purpose. The Speaker interposed, and a message was returned by the Lords' messengers, that it was contrary to the usage of Parliament to send a message in that form.[1] The causes of demanding a conference need not, however, be stated with minute distinctness. It has been held sufficient to specify that they were "upon a matter of high importance and concern, respecting the due administration of justice;"[2] "upon a subject of the highest importance to the prosperity of the British possessions in India;"[3] "upon a matter deeply connected with the interests of his Majesty's West India colonies;"[4] and "upon a matter essential to the stability of the empire, and to the peace, security, and happiness of all classes of his Majesty's subjects."[5] None of these expressions pointed out the precise purpose of the conference, but they described its general object, in each case, so far as to show that it was a proper ground for holding a conference.

Reasons offered by message or conference.

Conferences have been most frequently demanded, in order to offer reasons for disagreeing to amendments to bills; and until 1851, this was the only course of proceeding on such occasions. But by resolutions of both houses, agreed to at conferences 12th and 15th May 1851, where one house disagrees to any amendments made by the other, or insists upon any amendments to which the other house has disagreed, it will receive reasons for their disagreeing or insisting, as the case may be, by *message*, without a conference, unless at any time the other house should desire to communicate the same at a conference.[6] And in 1866, messages were substituted for conferences, in communicating addresses for commissions under the Corrupt Practices Act.

Since these resolutions were agreed to, there has been only

[1] 51 Com. J. 5; 32 Parl. Hist. 188; and see 4 Hatsell, 23.

[2] 85 Com. J. 473 (Sir J. Barrington).

[3] 88 Ib. 488 (E. I. C. Charter).

[4] 81 Ib. 116 (Slaves).

[5] 89 Ib. 232 (Union with Ireland).

[6] 106 Ib. 210. 217. 223.

one instance of a conference, where a message would have been admissible.[1] When any amendment made by the other house is disagreed to, a committee is appointed to draw up reasons for such disagreement; and when the reasons prepared by the committee are reported to the house and agreed to, a message is sent to communicate such reasons,[2] or to desire a conference.

Time and place of meeting.

It is the peculiar privilege of the Lords to name both the time and place of meeting, whether the conference be desired by themselves or by the Commons;[3] and when they agree to a conference, they at the same time appoint when and where it shall be held. Both houses communicate to each other their agreement to a conference, by messages in the ordinary manner.

Managers appointed.

Each house appoints managers to represent it at the conference, and it is "an ancient rule, that the number of the Commons named for a conference are always double to those of the Lords."[4] It is not, however, the modern practice to specify the number of the managers for either house. The managers of the house which desires the conference are the members of the committee who drew up the reasons, to whom others are frequently added; and, on the part of the other house, they are usually selected from those members who have taken an active part in the discussions on the bill, if present; or otherwise any members are named, who happen to be in their places. But it is not customary, nor consistent with the principles of a conference, to appoint any members as managers, unless their opinions coincide with the objects for which the conference is held.[5]

Duty of managers.

The duty of the managers is confined to the delivery and receipt of the resolutions to be communicated, or the bills to be returned, with reasons for disagreeing to amendments.

[1] Oaths Bill, 1858; 113 Com. J. 182.

[2] 106 Com. J. 438; 108 Ib. 809. Representation of the People Bill, 1867; 122 Ib. 440; Land Law (Ireland) Bill, 1881; 136 Ib. 453, &c.

[3] 1 Ib. 154; and see this claim as stated by the Lords, 9 Ib. 348.

[4] 1 Ib. 154.

[5] Ib. 350; 122 Ib. 438.

They are not at liberty to speak, either to enforce the resolutions or reasons communicated, or to offer objections to them. One of their number reads the resolutions or reasons, and afterwards delivers the papers on which they are written, which is received by one of the managers for the other house. When the conference is over, the managers return to their respective houses and report their proceedings.

Conferences in regard to bills.

Messages have now practically superseded conferences in relation to bills: but the former course of proceedings must still be briefly explained. Let it be supposed that a bill sent up from the Commons has been amended by the Lords and returned; that the Commons disagree to their amendments, draw up reasons, and desire a conference, that the conference is held, and the bill and reasons are in possession of the House of Lords. If the Lords should be satisfied with the reasons offered, they do not desire another conference, but send a message to acquaint the Commons that they do not insist upon their amendments. But if they insist upon the whole or part of their amendments, they desire another conference, and communicate the reasons of their perseverance. If the Commons should be still dissatisfied with these reasons, and persist in their disagreement to the Lords' amendments, they were formerly precluded, by the usage of Parliament, from desiring a third conference; and unless they allowed the bill to drop, laid it aside, or deferred the consideration of the reasons and amendments, they desired a free conference. This practice, however, was departed from on one special occasion. In 1836, after two conferences upon the Municipal Corporations Bill, a free conference was held, according to ancient usage:[1] but the disagreement between the two houses continued, and the consideration of the Lords' amendments and reasons was postponed for three months. In the following session, another bill was brought in, to which various amendments were made by the Lords, to which the Com-

[1] 91 Com. J. 783.

mons disagreed. The results of the free conference, however, had been so unsatisfactory, that the usage of Parliament was departed from, and four[1] ordinary conferences were successively held, which so far accommodated the differences between the two houses, that the bill ultimately received the royal assent.

Free conference.

A free conference differs materially from the ordinary conference; for, instead of the duties of the managers being confined to the formal communication of reasons, they are at liberty to urge their own arguments, offer and combat objections, and, in short, to attempt, by personal persuasion, to effect an agreement between the houses, which the written reasons had failed in producing. If a free conference should prove as unsuccessful as the former, the disagreement is almost helpless: but if the house in possession of the bill should at length be prepared to make concessions, in the hope of an ultimate agreement, it is competent to desire another free conference upon the same subject; or if any question of privilege or other new matter should arise, an ordinary conference may be demanded.[2] Until 1836, no free conference had been held since the year 1740: nor has there been any subsequent example.

Forms of holding.

It only remains to notice the manner in which conferences are held. When the time appointed has arrived, business is suspended in both houses, the names of the managers are called over, and they leave their places, and repair to the conference chamber. The Commons, who come first to the conference, enter the room uncovered, and remain standing the whole time within the bar, at the table.[3] The Lords have their hats on till they come just within the bar of the place of conference, when they take them off and walk uncovered to their seats: they then seat themselves, and remain sitting and covered during the conference. The lord

[1] 92 Com. J. 466. 512. 589. 646.

[2] 4 Hatsell, 42-45. 52.

[3] By order, 16th January 1702, none but managers are to stand within the bar.

(usually the lord privy seal) who receives or delivers the paper of resolutions or reasons stands up uncovered, while the paper is being transferred from one manager to the other: but while reading it he sits covered. When the conference is over, the Lords rise from their seats, take off their hats, and walk uncovered from the place of conference. The Lords who speak at a free conference, do so standing and uncovered.[1]

The Lords have the following Standing Orders in regard to the manner of holding conferences:—

Commons not to be covered.

"The place of our meeting with the lower house upon conference is usually the Painted Chamber,[2] where they are commonly before we come, and expect our leisure. We are to come thither in a whole body and not some lords scattering before the rest, which both takes from the gravity of the lords, and besides may hinder the lords from taking their proper places. We are to sit there and be covered: but they are at no committee or conference ever either to be covered, or sit down in our presence, unless it be some infirm person, and that by connivance in a corner out of sight, to sit, but not to be covered."[3]

None to speak at a conference but those of the committee.

"None are to speak at a conference with the lower house, but those that be of the committee; and when anything from such conference is reported, all the lords of that committee are to stand up."[4]

No stranger to be at a conference or committee.

"No man is to enter at any committee or conference (unless it be such as are commanded to attend) but such as are members of the house, or the heir apparent of a lord who has a right to succeed such lord, or the eldest son of any peer who has a right to sit and vote in this house, upon pain of being punished severely, and with example to others."[5]

Joint committees of Lords and Commons.

3. There are several early instances of the appointment of joint committees of the two houses:[6] but until 1864, no such committee had been appointed since 1695.[7] A rule similar to that adopted in regard to conferences, that the number on

[1] 4 Hatsell, 28, *n.*

[2] After the fire, in 1834, the Painted Chamber was fitted up and occupied as the temporary House of Lords. In the new building there was a conference hall or chamber, which was still called the Painted Chamber. 113 Com. J. 178. It is now converted into a dining-room for the Commons.

[3] Lords' S. O. No. 89.

[4] Ib. No. 90.

[5] Ib. No. 91; see also 1 Com. J. 156.

[6] 3 Hatsell, 38 *et seq.* Trials of the Lords in the Tower, 11th May 1769. Lord Stafford's impeachment, 27th November 1680.

[7] 22nd April 1695; 11 Com. J. 314.

the part of the Commons should be double that of the Lords, obtained in the constitution of joint committees; and was inconsistent with any practical union of the members of the two houses, in deliberation and voting. The principal advantages of a joint committee were that the witnesses were sworn at the bar of the House of Lords,[1] and that one inquiry, common to both houses, could be conducted preparatory to any decision of Parliament: but the power possessed by the Commons of out-voting the Lords,—their right to meet their lordships without the respectful ceremonies observed at a conference, and their share in the privilege of taking the evidence of sworn witnesses,—naturally rendered a joint committee distasteful to the House of Lords, by whom no power or facilities were gained in return. At length, in 1864, the chief obstacle was overcome by the appointment of a joint committee, of equal numbers representing both houses, on the railway schemes of that session, affecting the metropolis. This important proceeding, which originated with Mr. Milner Gibson, was eminently successful. The Commons, having appointed a committee of five members, requested the Lords "to appoint an equal number of lords to be joined with the members of this house." The Lords accordingly appointed a committee of five lords to join the committee of the Commons, and proposed a time for the meeting of the committee. The committee of the Commons received power to agree in the appointment of a chairman, and concurred in the choice of the Lord President.[2] And in 1867, by desire of the House of Lords, another joint committee was appointed upon Parliamentary deposits;[3] and several joint committees have since been appointed.[4] In

[1] 2 Com. J. 502; 5 Ib. 647. 655.

[2] 173 Hans. Deb. 291. 311. 493.

[3] 188 Ib. 423.

[4] Despatch of public business 1869; 124 Com. J. 87. Railway Companies Amalgamation, and Tramways (Metropolis) 1872; 127 Com. J. 61. 83. Railways Transfer and Amalgamation bills, 1873; 128 Ib. 62. Parliamentary agents, 1876; 131 Ib. 282. Stationery Office, 1881; 136 Com. J. 281. Channel Tunnel, April 1883.

1872, power was given to the Commons' committee to join in the appointment of a chairman of the joint committee on railway amalgamation, and a member of the Commons was elected chairman. In 1873, the railway and canal bills, containing powers of amalgamation, were committed to a joint committee of Lords and Commons. In this case it was not thought necessary to give the committee power to join in the appointment of a chairman, such a proceeding being usual in the Lords, but not in the Commons; and a member of the Commons was again chosen as chairman.

Select committees communicating with each other.

4. A modification of the practice of appointing joint committees may be effected by putting committees of both houses in communication with each other. In 1794, the Commons had communicated to the Lords certain papers which had been laid before them by the king, in relation to corresponding societies, together with a report of a committee of secrecy; and on the 22nd of May 1794, the Lords sent a message, to acquaint the Commons that they had referred the papers to a committee of secrecy, and had "given power to the said committee to receive any communication which may be made to them, from time to time, by the committee of secrecy appointed by the House of Commons;[1] to which the Commons replied that they had given power to their committee of secrecy to communicate, from time to time, with the committee of secrecy appointed by the Lords.[2] And similar proceedings were adopted, upon the inquiry into the state of Ireland in 1801, which was conducted by secret committees of the Lords and Commons, communicating with each other;[3] and again in 1861, power was given to the select committee on the business of the house to communicate, from time to time, with a select committee of the House of Lords upon the same subject.[4]

Other means of communication.

A few words may be added concerning other means of communication between the two houses, less open and osten-

[1] 49 Com. J. 619.
[2] Ib. 620.
[3] 66 Ib. 287. 291.
[4] 116 Ib. 77; 93 Lords' J. 13.

sible than those already described. The representation of the Executive Government by ministers, in both houses, who have a common responsibility for the measures and policy of the State, secures uniformity in the direction of the councils of these independent bodies. Every public question is presented to them both, from the same point of view: the judgment of the cabinet, and the sentiments of the political party which they represent, are adequately expressed in each house; and a general agreement is thus attained, which no formal communications could effect. The organization of parties also exercises a marked influence upon the relations of the two houses. When ministers are able to command a majority in the Lords as well as in the Commons, concord is assured. The views of the dominant party are carried out spontaneously in both houses, as if they were a single chamber. But when ministers enjoying the confidence of the majority of the Commons are opposed by a majority of the Lords, it is difficult to avert frequent disagreements between the two houses. The policy approved by one party is condemned by the other; and the minority in the Commons naturally look for the support of the majority in the Lords. Hence the decisions of one house are often contested by the other. When this conflict of opinion arises upon a bill, the proceedings which ensue have already been explained. When it arises upon a question of policy or administration, the course pursued is, in great measure, determined by the character of the difference. The two houses may differ upon abstract questions without any grave consequences. But if the policy of the government is condemned, or their conduct censured, or legislation arrested in one house, it is natural that the other should be ready with resolutions in support of the cause of which it approves. Thus during the contest between Mr. Pitt and the coalition, in 1874, the Lords were forward in giving countenance to the minister, in his struggle with a hostile majority of the Commons.[1] Again, in the

[1] 1 May, Const. Hist., 7th ed. 75–83.

great Reform crisis of 1831-32, the Commons supported the ministers and their cause, when they were imperilled by the hostility of the Lords.[1] And in 1839, when the opposition, in the Commons, had failed to arrest the establishment of a system of national education under an order in council, by an address to the Crown, the Upper House presented an address condemning the scheme, but without effect.[2] In the same year, the House of Lords having appointed a committee to inquire into the state of Ireland since 1835, in respect of crime and outrage, the Commons regarding this step as an arraignment of the policy of the ministers, supported them by a vote of confidence.[3] In 1850, when the Lords censured the government for the course taken in reference to the claims of Don Pacifico upon Greece, the Commons came to the rescue, with a vote of approval and confidence.[4]

In 1857, a vote of censure upon the policy of the government, in reference to the war in China, was negatived in the House of Lords; but, by a combination of parties, a vote to the same effect was carried in the House of Commons;[5] and was followed by a dissolution.

In 1860, the Lords having rejected the bill for the abolition of the paper duties, the Commons responded by resolutions re-asserting their privileges in regard to money bills.[6] And again, in 1864, conflicting resolutions were agreed to in the two houses in relation to the Danish War.[7]

In 1871, a bill having been passed by the Commons for the abolition of purchase in the army, and providing compensation to the officers, which was refused a second reading by the Lords, a royal warrant was issued cancelling former regulations by which the purchase of commissions had been sanctioned. The Lords were thus constrained to reconsider

[1] 1 May, Const. Hist., 7th ed. 143.

[2] Ib. 415; 48 Hans. Deb. 3rd Ser. 229 *et seq.*, 1322; 49 Ib. 128.

[3] 71 Lords' J. 148; 94 Com. J. 202.

[4] 82 Lords' J. 222; 105 Com. J. 475.

[5] 88 Lords' J. 533; Hans. Deb. 26 Feb. 1857, &c.

[6] See Chap. XXI. (Supply).

[7] 96 Lords' J. 538; 119 Com. J. 405.

the bill, in order to secure the pecuniary interests of the officers; but in proceeding with the bill they placed on record a condemnation of the issue of the warrant. It became a matter for consideration whether the Commons should be invited to respond to this adverse resolution; but as legislation was not arrested, and the vote of the Lords was without effect upon the policy or political position of ministers, the passing of the bill was accepted as a sufficient approval of the course adopted, without any retaliatory resolution. In 1881, the Lords condemned the policy of the government in regard to Afghanistan, and the Commons approved it.

In 1882, the Lords having appointed a committee to inquire into the working of the Irish Land Act of the previous year, the Commons, after a long debate, agreed to a resolution that parliamentary inquiry, at the present time, into the working of that act tends to defeat its operation, and must be injurious to the interests of good government in Ireland.[1]

[1] 137 Com. J. 94; 266 Hans. Deb. 3rd Ser. 1729, &c.

CHAPTER XVII.

COMMUNICATIONS FROM THE CROWN TO PARLIAMENT: THEIR FORMS AND CHARACTER: HOW ACKNOWLEDGED: ADDRESSES TO THE CROWN: MESSAGES TO MEMBERS OF THE ROYAL FAMILY; AND COMMUNICATIONS FROM THEM.

Queen present in Parliament.

THE Queen is always supposed to be present in the High Court of Parliament, by the same constitutional principle which recognises her presence in other courts:[1] but she can only take part in its proceedings by means which are acknowledged to be consistent with the parliamentary prerogatives of the Crown, and the entire freedom of the debates and proceedings of Parliament. She may be present in the House of Lords, at any time during the deliberations of that house, where the cloth of estate is: but she may not be concerned in any of its proceedings, except when she comes in state for the exercise of her prerogatives. In earlier times the sovereign was habitually present in the House of Lords, as being his council, whose advice and assistance he personally desired. King Henry VI., in the ninth year of his reign, declared, with the advice and consent of the Lords, "That it shall be lawful for the Lords to debate together, in this present Parliament, and in every other for time to come, in the king's absence, concerning the condition of the kingdom, and the remedies necessary for it."[2] Whence it appears that, at that time, it was customary for the king to be present at the deliberations of the Lords, even if his presence was not essential to their proceedings. When he ceased to take a personal part in their deliberations, it was still customary for the

[1] See Hale, Jurisd. of Lords, c. 1. Fortescue, c. 8 (by Amos), with note B.; and 2 Inst. 186.

[2] 3 Rot. Parl. 611.

sovereign to attend the debates as a spectator.[1] Charles II.,[2] and his successors, James II., William III.,[3] and Queen Anne,[4] were very frequently present: but this questionable practice, which might be used to overawe that assembly, and influence their debates,[5] has wisely been discontinued since the accession of George I.[6] And, according to the practice of modern times, the Queen is never personally present in Parliament, except on its opening and prorogation; and occasionally for the purpose of giving the royal assent to bills during a session.[7]

The various constitutional forms by which the Crown communicates with Parliament, and by which Parliament communicates with the Crown, will now be noticed in succession, according to their relative importance and solemnity.

Communications from the Crown, in person or by commission.

The most important modes by which the Crown communicates with Parliament are exemplified on those occasions when her Majesty is present, in person or by commission,

[1] On the 24th February 1640, while the trial of Lord Strafford was pending, the king came to the house, and the articles and answers were read to his majesty. "When the king was gone, the Lords ordered the lord keeper to resume the house; and commanded the Earl of Strafford to be again brought to the bar (taking all that was done in the king's presence to be no act of the house), and appointed the lord keeper to demand his answer of him." 2 Parl. Hist. 742.

[2] 12 Lords' J. 318. "Charles II. being sat, he told them it was a privilege he claimed from his ancestors to be present at their deliberations; that, therefore, they should not for his coming interrupt their debates, but proceed, and be covered."—Andrew Marvell's Letters, p. 405. Nor was Charles II. an inattentive observer; for on the 26th January 1670, he reprimands the Lords for their "very great disorders, both at the hearing of causes, and in debates amongst themselves;" 12 Lords' J. 413.

[3] William III. was present during the debate on the second reading of the Abjuration Bill, 2nd May 1690. 14 Lords' J. 483. 3 Lord Macaulay, Hist. 347.

[4] She was present for the first time on the 29th November 1704, "at first on the throne, and after, it being cold, on a bench at the fire." Jerviswood Corr. 15, cited by Lord Stanhope, Reign of Queen Anne, 166. She was present on the 15th November and 6th December 1705; Ib. 205. 208.

[5] See 2 Lord Macaulay, Hist. 35.

[6] 2 Hatsell, 371, *n.*; Chitty on Prerogatives, 74. The last occasion appears to have been the attendance of Queen Anne, on the 9th and 12th January 1710, during the debates upon the war with Spain.

[7] 63 Lords' J. 885.

in the House of Lords, to open or prorogue Parliament, and when a royal speech is delivered to both houses. In giving the royal assent to bills in person or by commission, the communication of the Crown with the Parliament is of an equally solemn character.[1] On these occasions the whole Parliament is assembled in one chamber, and the Crown is in immediate and direct communication with the three estates of the realm.

By message under the sign manual.

The mode of communication next in importance is by a written message under the royal sign manual, to either house singly,[2] or to both houses separately.[3] The message is brought by a member of the house, being a minister of the Crown, or one of the royal household.[4] In the House of Lords, the peer who is charged with the message, acquaints the house from his place, that he has a message under the royal sign manual, which her Majesty had commanded him to deliver to their lordships. And the lord chancellor then reads the message at length, all the lords being uncovered; and it is afterwards read, or supposed to be read, again, at the table, by the clerk.[5] In the House of Commons the member who is charged with the message appears at the bar, where he informs the Speaker that he has a message from her Majesty to this house signed by herself; which, on being desired by the Speaker, he brings up to the chair. The message is delivered to the Speaker, who reads it at length, while all the members of the house are uncovered. On the 21st March 1882, Mr. Speaker explained that a message from the Crown, under the sign manual, was always received by members uncovered: but that this custom did not apply to an answer to an address.[6]

Subjects of such messages.

The subjects of such messages are usually communications in regard to important public events which require the

[1] See Chapter XVIII. on PUBLIC BILLS.

[2] 86 Com. J. 488.

[3] 66 Lords' J. 958; 89 Com. J. 575.

[4] If brought by one of the household, he appears in uniform,—in the Lords, in his place,—in the Commons, at the bar.

[5] 66 Lords' J. 958.

[6] 267 Hans. Deb. 3rd Ser. 1443.

attention of Parliament;[1] the prerogatives, or property of the Crown;[2] provision for the royal family;[3] and various matters in which the executive seeks for pecuniary aid from Parliament.[4] They may be regarded, in short, as additions to the royal speech, at the commencement of the session, submitting other matters to the deliberation of Parliament, besides the causes of summons previously declared.

Should be communicated to both houses.

This analogy between a royal speech, and a message under the sign manual, is supported by several circumstances common to both. A speech is delivered to both houses, and every message under the sign manual should also be sent, if practicable, to both houses: but when they are accompanied by original papers, they have occasionally been sent to one house only. The more proper and regular course is to deliver them on the same day, and a departure from this rule has been a subject of complaint:[5] but from the casual circumstance of both houses not sitting on the same day, or other accidents, it has frequently happened that messages have been delivered on different days.[6]

On matters of supply.

In the royal speech, the demand for supplies is addressed exclusively to the Commons, but it still forms part of the speech to both houses; and in the same manner, messages for pecuniary aid are usually sent to both houses: but the form differs so far as to acknowledge the peculiar right of the Commons in voting money, while it seeks no more than the concurrence of the Lords.[7]

The Lords have taken exceptions to any message for

[1] 40 Lords' J. 186; 44 Ib. 74; 82 Com. J. 111.

[2] 85 Com. J. 466; 89 Ib. 189. 579.

[3] 43 Lords' J. 566; 86 Com. J. 719; 105 Ib. 539, 18th July 1850 (Duke of Cambridge); 82 Lords' J. 368, 22nd July 1850; 112 Com. J. 153 (Princess Royal, 1857); Prince of Wales, 1863; Princess Helena, and Princess Mary of Cambridge, 1866. Marriage of the Duke of Albany, 1882; 137 Com. J. 112.

[4] 42 Lords' J. 361; 82 Com. J. 529. Admiral Lord Alcester and General Lord Wolseley, 13th April 1883, &c.

[5] 2 Hatsell, 366, *n.*

[6] 66 Lords' J. 958; 89 Com. J. 575; 82 Lords' J. 368; 105 Com. J. 539.

[7] 73 Lords' J. 28; 96 Com. J. 29 (Lord Keane). 88 Lords' J. 129; 111 Com. J. 186 (Sir F. Williams); Lord Alcester and Lord Wolseley, 1883, &c.

supplies being sent exclusively to the Commons,[1] and for upwards of a century it has been the custom, with few exceptions,[2] to send such messages to both houses; which is consistent with their constitutional relations, in matters of supply.[3]

Verbal messages.

Another form of communication from the Crown to either house of Parliament, is in the nature of a verbal message, delivered, by command, by a minister of the Crown, to the house of which he is a member. This communication is used whenever a member of either house is arrested for any crime at the suit of the Crown; as the privileges of Parliament require that the house should be informed of the cause for which their member is imprisoned, and detained from his service in Parliament. Thus, in 1780, Lord North informed the House of Commons that he was commanded by his Majesty to acquaint the house, that his Majesty had caused Lord George Gordon, a member of the house, to be apprehended, and committed for high treason.[4] And at the same time Lord North presented, by command, the proclamation that had been issued, in reference to the riots in which Lord George Gordon had been implicated.

Members imprisoned.

Military courts martial.

In the same manner, when members have been placed under arrest, in order to be tried by military courts martial, a secretary of state, or some other minister of the Crown, being a privy councillor, informs the house that he had been commanded to acquaint them of the arrest of their member, and its cause.[5]

Naval courts martial.

Communications of the latter description are made when members have been placed under arrest, to be tried by naval courts martial: but in these cases they are not in the form of a royal message, but are communications from the Lord

[1] 25th June 1713; 28th February 1739. 2 Hatsell, 366, *n.*

[2] An exception was the message in regard to the provision for her Majesty Queen Adelaide, on the 14th April 1831, which was presented to the Commons alone; 86 Com. J. 488.

[3] See Lords' and Commons' Gen. Journ. Indexes, tit. "Messages."

[4] 37 Com. J. 903.

[5] 58 Ib. 597; 59 Ib. 33; 70 Ib. 70.

High Admiral or the Lords Commissioners of the Admiralty, by whom the warrants are issued for taking the members into custody; and copies of the warrants are, at the same time, laid before the house.[1]

Arrest in Ireland.

In 1848, the arrest of a member in Ireland, on a charge of treason, was communicated to the house by a letter from the Lord Lieutenant, addressed to the Speaker;[2] and the same course has been followed in later cases, when members have been arrested, on criminal charges in Ireland.[3]

The other modes of communicating with Parliament are by the royal "pleasure," "recommendation," or "consent," being signified.

Queen's pleasure signified.

The Queen's pleasure is signified at the commencement of each parliament, by the Lord Chancellor, that the Commons should elect a Speaker; and when a vacancy in the office of Speaker occurs in the middle of a Parliament, a communication of the same nature is made by a minister, in the house.[4] Her Majesty's pleasure is also signified for the attendance of the Commons in the House of Peers; in regard to the times at which she appoints to be attended with addresses; and concerning matters personally affecting the interests of the royal family.[5] At the end of a session, also, the royal pleasure is signified, by the Lord Chancellor, that Parliament should be prorogued. Under this head may likewise be included the approbation of the Speaker elect, signified by the Lord Chancellor.

Royal recommendation or consent.

The royal recommendation is signified to the Commons by a minister of the Crown, on receiving petitions,[6] on motions for the introduction of bills;[7] or on the offer of other motions, involving any public expenditure or grant of money not included in the annual estimates, whether such grant is to be

[1] 62 Com. J. 145; 64 Ib. 214; 67 Ib. 246. See also *supra*, p. 154.

[2] 103 Com. J. 888; 8th August 1848 (Mr. W. S. O'Brien).

[3] See *supra*, p. 154.

[4] See *supra*, p. 202.

[5] 86 Com. J. 460.

[6] 112 Ib. 219; 119 Ib. 177.

[7] 98 Ib. 167; 101 Ib. 615; 104 Ib. 412; 113 Ib. 31.

made in the committee of supply, or any other committee;[1] or which would have the effect of releasing or compounding any sum of money owing to the Crown.[2] The royal consent is given, by a privy councillor, to motions for leave to bring in bills;[3] or to amendments to bills,[4] or to bills in any of their stages,[5] or to instructions to committees on bills,[6] or to Lords' amendments to bills,[7] which concern the royal prerogatives, the hereditary revenues, or personal property or interests of the Crown or Duchy of Cornwall.[8] When the Prince of Wales is of age, his own consent is signified, as Duke of Cornwall, in the same manner.[9] The mode of communicating the recommendation and consent is the same: but the former is given at the very commencement of a proceeding, and must precede all grants of money; while the latter may be given at any time during the progress of a bill, in which the consent of the Crown is required; and has even been signified on the final question that this bill do pass.[10] Where bills have been suffered, through inadvertence, to be read a third time and passed, the proceedings have been declared null and void.[11]

[1] See Chapter XXI. on SUPPLY.

[2] 75 Com. J. 152. 167; 98 Ib. 52. To a clause about to be proposed for that purpose in committee on a bill, 20th June 1861; 116 Com. J. 285. See also Chapter XXI. on SUPPLY.

[3] 106 Com. J. 232; 107 Ib. 142; 117 Ib. 79. In 1853, the Queen's consent *and* recommendation were signified to the Land Revenues Bill; 108 Ib. 625.

[4] 101 Com. J. 843; 107 Ib. 321; 124 Ib. 222.

[5] Second reading, 108 Ib. 375; 110 Ib. 290; third reading, Ib. 115, &c.

[6] Civil List Bill, 1837; 93 Com. J. 204.

[7] 101 Com. J. 892; 103 Ib. 729; 126 Ib. 355.

[8] 77 Ib. 408; 86 Ib. 485. 550; 91 Ib. 548; 105 Ib. 492.

[9] 118 Ib. 310; 119 Ib. 368.

[10] 98 Ib. 287; 99 Ib. 309; 104 Ib. 192; 105 Ib. 338. In 1812, on the third reading of the Sinecure Offices Bill, objection being taken that the consent of the Crown had not been signified, Mr. Speaker Abbot observed that "after the third reading the bill was open to amendments (according to the practice of that time); and if in the amended form it went to take away any part of the revenues of the Crown, it would be contrary to the usage of Parliament to *pass* such a bill without the consent of the Crown." And the bill was accordingly read a third time; and, on a later day, upon the question that this bill do pass, the consent of the Crown was duly signified. 23 Hans. Deb. 1st Ser. 474. 551.

[11] 107 Com. J. 157. See also Chap. XVIII., as to Restitution Bills.

Amendments in Committee affecting the Crown.

In June 1874, notice having been given of an amendment in committee on the Valuation of Property Bill, rendering Crown property rateable, doubts arose whether, as the consent of the Crown had not been signified, the question could be put by the chairman upon such amendment: but, after full consideration and review of precedents, it was determined that the chairman was bound to put the question. Several precedents were found, in the last century, in which amendments affecting the interests of the Crown had been made in committees on bills, and the consent of the Crown was afterwards signified when such amendments were agreed to upon the report.[1] Hence it appeared that it was for the house, and not for the committee, which cannot receive any communication from the Queen, to guard the interests of the Crown. And it is clear, from many precedents, that the house itself is reluctant to interfere for that purpose until the very latest stages of the bill.

Consent of the Crown withheld.

On the 1st July 1844, on the third reading of the St. Asaph and Bangor Dioceses Bill, in the House of Lords, it was stated by the Duke of Wellington, that her Majesty's ministers had not been instructed to signify the consent of the Crown to the bill, and that the royal prerogative was affected by it. The lord chancellor then desired to be instructed by the house whether he was at liberty to put the question, until her Majesty's royal consent had been given; upon which a committee was appointed to search for precedents, whether the lord speaker can, according to the usage of this house, put the question "That this bill do pass?" until the consent of her Majesty is given.[2] This committee reported that there were no precedents:[3] but that the bill belonged to that class to which it had been the usage to give

[1] Offences against Customs and Excise Laws Bill, 12th May 1736: 22 Com. J. 714. Murder of Captain Porteous Bill, 15th June 1737: 22 Ib. 899; Westminster Bridge Bill, 23rd March 1740; 23 Ib. 693; Tenure of Ward-holding (Scotland) Bill, 22nd May 1747; 25 Ib. 392.

[2] 76 Hans. Deb. 3rd Ser. 122.

[3] 1st Rep. 76 Hans. Deb. 3rd Ser. 294.

the consent of the Crown before passing the house; and that it had been the custom to receive such consent at various stages.[1] The consent of the Crown was still withheld, and the bill was consequently withdrawn.[2] And in 1866, on the third reading of the Blackwater Bridge Bill, notice being taken that the Queen's consent had not been signified, Mr. Speaker declined to put the question.[3] In 1868, the Peerage (Ireland) Bill was withdrawn upon the second reading, when it was intimated that ministers would not advise her Majesty to give her consent to the bill at a later stage.[4]

Crown places its interests at the disposal of Parliament.

Another form of communication, similar in principle to the last, is when the Crown "places its interests at the disposal of Parliament," which is signified in the same manner, by a minister of the Crown.[5] In 1833, the king had referred, in his speech from the throne, to a measure relating to the church temporalities in Ireland, and before going into committee upon that subject, his Majesty's recommendation had been signified. Yet objection was taken upon the second reading of the bill, that the king had not formally placed his interests in the Irish bishopries at the disposal of Parliament;[6] and a communication, in proper form, was afterwards made to that effect. In 1868, the Government being unwilling to advise the Queen to place her interest in the temporalities of the bishoprics and benefices in Ireland at the disposal of Parliament, the House of Commons voted an address to her Majesty, praying that such interest should be placed at their disposal. In reply, the Queen desired that her interest should not stand in the way of the consideration of any measure relating to the Irish Church,[7] and the bill for suspending appointments to bishoprics and benefices in Ireland was proceeded with, and passed by the Commons, in opposition to

[1] 2nd Rep. 76 Hans. Deb. 3rd Ser. 422.
[2] 76 Hans. Deb. 3rd Ser. 591.
[3] 121 Com. J. 423.
[4] 191 Hans. Deb. 3rd Ser. 1564.
[5] Church Temporalities (Ireland) Bill, 1833; 88 Com. J. 381; Church of Ireland Bill, 1835; 90 Ib. 447; 91 Ib. 427; 95 Ib. 385, &c.
[6] Hans. Deb. 6th May 1833.
[7] 123 Com. J. 160. 170.

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the ministers of the Crown. A similar course was adopted by the Lords, in 1875, in regard to Irish peerages.[1]

Constitutional character of these communications.

These several forms of communication are recognized as constitutional declarations of the Crown, suggested by the advice of its responsible ministers, by whom they are announced to Parliament, in compliance with established usage. They cannot be misconstrued into any interference with the proceedings of Parliament, as some of them are rendered necessary by resolutions of the House of Commons, and all are founded upon parliamentary usage, which both houses have agreed to observe. This usage is not binding upon Parliament: but if, without the consent of the Crown, previously signified, Parliament should dispose of the interests or affect the prerogative of the Crown, the Crown could still protect itself, in a constitutional manner, by the refusal of the royal assent to the bill. And it is one of the advantages of this usage, that it obviates the necessity of resorting to the exercise of that prerogative.

How acknowledged.

Having enumerated all the accustomed forms in which the royal will is made known to Parliament, it may now be shown, in the same order, in what manner they are severally acknowledged by each house.

Addresses in answer to written messages.

The forms observed on the meeting and prorogation of Parliament, and the proceedings connected with the address in answer to the royal speech, were described in the seventh chapter,[2] and the royal assent to bills will be treated of hereafter.[3] Messages under the royal sign manual are generally acknowledged by addresses in both houses, which are presented from one house by the "lords with white staves," *i. e.*, the Lord Steward and the Lord Chamberlain; or sometimes by other lords specially named; and from the other by privy councillors, in the same manner as addresses in answer to royal speeches, when Parliament has been

[1] 225 Com. J. 1210.

[2] *Supra*, p. 223.

[3] *Infra*, Chapter XVIII.

opened by commission.[1] In reply to war messages, the addresses have sometimes been drawn up by committees,[2] and presented by the whole house. On the last occasion, 31st March 1854, the address was presented by the whole house, but was not drawn up by a committee.[3]

Exceptions in the Commons.

In the Commons, however, it is not always necessary to reply to messages under the sign manual by address; as a prompt provision, made by that house, is itself a sufficient acknowledgment of royal communications for pecuniary aid. The House of Lords invariably present an address, in order to declare their willingness to concur in the measures which may be adopted by the other house;[4] but the bills consequent upon messages relating to grants are presented by the Speaker of the Commons, and are substantial answers to the demands of the Crown. The rule, therefore, in the Commons, appears to be, to answer, by address, all written messages which relate to important public events,[5] or matters connected with the prerogatives, interests, or property of the Crown;[6] or which call for general legislative measures:[7] but, in regard to messages relating exclusively to pecuniary aids, of whatever kind, to consider them in a committee of the whole house, on a future day, when provision is made accordingly.[8]

To verbal messages.

When the house is informed, by command of the Crown, of the arrest of a member to be tried by a military court martial, it immediately resolves upon an address of thanks to her Majesty, "for her tender regard to the privileges of this house."[9] And when the arrest of a member for a criminal offence is communicated from the Crown, an address of thanks is voted in answer.[10] But as the arrest of a member to be tried by a naval court martial does not proceed imme-

[1] See *supra*, p. 224.

[2] In 1793 and 1803.

[3] 109 Com. J. 169; 132 Hans. Deb. 3rd Ser. 307.

[4] 63 Lords' J. 892.

[5] 82 Com. J. 114, &c.; assassination of the Emperor of Russia, 1881; 136 Ib. 223; calling out the reserve force, 1882; 137 Ib. 399.

[6] 85 Ib. 466; 89 Ib. 578; 95 Ib. 520; annuities to Lord Alcester and Lord Wolseley, 1883.

[7] 85 Ib. 214.

[8] 112 Ib. 153; 121 Ib. 99, &c.

[9] 70 Ib. 70.

[10] 37 Ib. 903.

diately from the Crown, and the communication is only made from the Lords of the Admiralty, no address is necessary in answer to this indirect form of message.

On royal pleasure, &c. being signified.

The matters upon which the royal pleasure is usually signified need no address in answer, as immediate compliance is given by the house; and the recommendation and consent of the Crown, as already explained, are only signified as introductory to proceedings in Parliament, or essential to their progress.

Addresses.

These being the several forms of acknowledging communications proceeding from the Crown, it now becomes necessary to describe those which originate with Parliament. It is by addresses that the resolutions of Parliament are ordinarily communicated to the Crown. These are sometimes in answer to royal speeches or messages, but are more frequently in regard to other matters, upon which either house is desirous of making known its opinions to the Crown.

Joint addresses.

Addresses are sometimes agreed upon by both houses, and jointly presented to the Crown, but are more generally confined to each house singly. When some event of unusual importance[1] makes it desirable to present a joint address, the Lords or Commons, as the case may be, agree to a form of address, and, having left a blank for the insertion of the title of the other house, communicate it at a conference, and desire their concurrence. The blank is filled up by the other house, and a message is returned, acquainting the house with their concurrence, and that the blank has been filled up. Joint addresses are also agreed to, for the appointment of commissions to inquire into corrupt practices at elections;[2] and in 1866, the Commons signified their willingness to substitute a message for a conference in such cases,[3] in which the Lords concurred,[4] and messages have since been resorted to in all

[1] 87 Com. J. 421; 89 Ib. 235. Outrage upon the Queen, 1840; 95 Ib. 422. Outrage upon the Queen, 1842; 97 Ib. 324. Attempt against her Majesty's life, 1882; 137 Ib. 88.

[2] See Chapter XXII. on ELECTIONS.

[3] 121 Com. J. 256.

[4] By resolution, 24th April 1866.

such cases.[1] Such addresses are presented either by both houses in a body,[2] or by two peers and four members of the House of Commons;[3] and they have been presented also by committees of both houses;[4] by a joint committee of Lords and Commons,[5] and by the lord chancellor and the Speaker of the House of Commons:[6] but the Lords always learn her Majesty's pleasure, and communicate to the Commons, by message, the time at which she has appointed to be attended.

Separate addresses.

The addresses of the Commons in answer to the royal speech at the commencement of the session are formally prepared by a committee, upon whose report they are agreed to, after having been twice read: but at other times, except on some few special occasions,[7] no formal address is prepared, and the resolution for the address is alone presented. In 1854, an address was moved, and agreed to in proper form, instead of in the customary form of a resolution, without being referred to a committee;[8] and though it has been customary, for upwards of one hundred and fifty years, to present such resolutions, not only by privy councillors but by the house itself;[9] yet whenever an address is to be presented by the whole house, it is better that it should be moved in that form, or prepared by a committee; as the mere resolution for an address cannot be read by the Speaker to her Majesty, with the same effect as a formal address expressly prepared for that purpose.[10] Sometimes addresses are agreed

[1] 124 Com. J. 125. 169.

[2] 87 Ib. 424; 72 Lords' J. 393; 74 Ib. 279.

[3] 85 Com. J. 652; 112 Ib. 423; 114 Ib. 373, &c. A joint address, for the appointment of certain election commissions, having been agreed to on the 2nd September 1880, when the Queen was at Balmoral, her Majesty was pleased to dispense with the personal attendance of the two lords and four commoners appointed to present the address; see Lords' Minutes, p. 906.

[4] 1 Com. J. 877.

[5] 2 Ib. 462.

[6] 23rd Dec. 1708; 16 Com. J. 54.

[7] Convention with Spain, 1738; 23 Com. J. 277. Peace with France and Spain, 1762; 29 Ib. 395. Treaty with France, 1787; 42 Ib. 401. Treaty of peace, 6th May 1856; 111 Ib. 182, &c.

[8] Address on the war with Russia, 31st March 1854; 109 Com. J. 169; 132 Hans. Deb. 3rd Ser. 307.

[9] See 2 Hatsell, 388.

[10] On the 6th February 1858, both

to upon the report of committees of the whole house, not only in relation to matters involving public expenditure,[1] but concerning other public affairs.[2] Addresses, or resolutions for addresses, are ordered to be presented by the whole house;[3] by the lords with white staves, or privy councillors;[4] and, in some peculiar cases, by members specially nominated.[5]

Their subjects.

The subjects upon which addresses are presented are too varied to admit of enumeration. They have comprised every matter of foreign[6] or domestic policy;[7] the administration of justice;[8] the confidence of Parliament in the ministers of the Crown:[9] the expression of congratulation or condolence (which are agreed to *nem. con.*);[10] and, in short, representations upon all points connected with the government and welfare of the country. But they ought not to be presented in relation to any bill depending in either house of Parliament.[11]

Mode of presenting.

When a joint address is to be presented by both houses, the lord chancellor and the House of Lords, and the Speaker and the House of Commons, proceed in state to the palace at the time appointed. The Speaker's state coach and the

houses had agreed to resolutions only. The Speaker, however, in addressing the Queen introduced this preface: "Most gracious Sovereign, your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, have resolved *nem. con.*," &c. &c. The lord chancellor read the resolution of the Lords without any preface, according to ancient usage.

[1] See Chapter XXI. on SUPPLY.

[2] State of the nation, 22nd Dec. 1783; Chancellor of the Duchy of Lancaster, 24th Dec. 1783; 39 Com. J. 848. 855; Defence of the kingdom, 20th June 1803; 58 Ib. 528, &c.

[3] 92 Com. J. 492; 113 Ib. 31.

[4] 92 Lords' J. 19.

[5] 10 Com. J. 295; 67 Ib. 391.

[6] 78 Ib. 278; 82 Ib. 118; 88 Ib. 471. Assassination of President Lincoln, 1865; 120 Ib. 229.

[7] 89 Ib. 235.

[8] 85 Ib. 472.

[9] 7 Ib. 325.

[10] 105 Ib. 508; 108 Ib. 371; 113 Ib. 31; 123 Ib. 142. Death of Grand Duchess of Hesse (Princess Alice), 16th December 1878. Assassination of the Emperor of Russia, 15th March 1881. When this address was answered, a letter from the Russian Ambassador to Earl Granville was also communicated, by her Majesty's command, forwarding a telegraphic message from the Emperor of Russia, in acknowledgment of the address; 136 Com. J. 141.

[11] 12 Lords' J. 72. 81. 88; 8 Com. J. 670; 1 Grey's Debates, 5.

carriages of the members of the House of Commons, are entitled, by privilege or custom, to approach the palace through the central Mall in St. James's Park. Whether this distinction be enjoyed as part of their privilege of freedom of access to her Majesty, or by virtue of any other right or custom, it is peculiar to the Commons, who always take this route, while the Lords advance by the ordinary carriage-road.

Joint addresses.

On reaching the palace, the two houses assemble in a chamber adjoining the throne room, and when her Majesty is prepared to receive them, the doors are thrown open, and the Lord Chancellor and the Speaker[1] advance side by side, followed by the members of the two houses respectively, and are conducted towards the throne by the Lord Chamberlain. The Lord Chancellor reads the address, and presents it to her Majesty, on his knee, to which her Majesty returns an answer, and both houses retire from the royal presence.

Separate addresses.

When addresses are presented separately, by either house, the forms observed are similar to those already described, except that addresses of the Commons are then read by their Speaker. Each house proceeds by its accustomed route to the palace, and is admitted with similar ceremonies. In presenting the address, the mover of the address in the Lords is on the right hand of the Chancellor, and the seconder on his left: while the mover and seconder of the address, in the Commons, are on the left hand of the Speaker. When the Lord Chancellor or Speaker has read the address, he presents it to her Majesty, kneeling upon one knee.

Dress of peers and members.

It is customary for all the lords, without exception, who attend her Majesty, to be in levée dress: but the greater part of the members of the House of Commons, generally assert their privilege of freedom of access to the throne, by accompanying the Speaker in their ordinary attire.[2]

Answers to addresses.

When addresses have been presented by the whose house,

[1] The Speaker is always on the left hand of the Chancellor.

[2] They are not permitted to enter the royal presence with sticks or umbrellas. See 2 Hatsell, 390, *n.*

the Lord Chancellor in one house, and the Speaker in the other, report the answer of her Majesty; but when they have been presented by the lords with white staves, or by privy councillors only, the answer is reported by one of those members who have had the honour of attending her Majesty, being generally, in the House of Lords, the Lord Chamberlain, who appears in levée dress, with his white staff; and in the House of Commons, one of the royal household, who appears at the bar, and on being called by the Speaker, reads her Majesty's answer. If a member of the household appears, at the bar, in uniform, with the answer to an address, the proceedings of the house are sometimes interrupted, until the answer has been received.[1]

Resolutions communicated.

Another mode of communication with the Crown, less direct and formal than an address, has been occasionally adopted; when resolutions of the house,[2] and resolutions and evidence taken before a committee,[3] have been ordered to be laid before the sovereign. In such cases the resolutions have been presented in the same manner as addresses, and answers have sometimes been returned.[4]

Messages to the royal family.

It is to the reigning sovereign, or regent, alone that addresses are presented by Parliament: but messages are frequently sent by both houses to members of the royal family, to congratulate them upon their nuptials,[5] or other auspicious events;[6] or to condole with them on family bereavements.[7] Resolutions have also been ordered to be laid before members of the royal family. Certain members are always nominated by the house to attend those illustrious personages with the messages or resolutions; one of

[1] 108 Com. J. 438; 17th Dec. 1878.

[2] 37 Com. J. 330; 39 Ib. 884; 40 Ib. 1157; 60 Ib. 206; 67 Ib. 462; 78 Ib. 316, &c.

[3] 90 Ib. 534.

[4] 39 Ib. 885; 60 Ib. 211.

[5] 72 Lords' J. 53; 73 Com. J. 424; 95 Ib. 88.

[6] 40 Lords' J. 584; 74 Ib. 6.

[7] 53 Lords' J. 367; 75 Com. J. 480; 92 Ib. 493 (the Queen Dowager); 105 Ib. 508. To the Duchess of Edinburgh, on the assassination of the Emperor of Russia, by both houses, 15th March 1881; 259 Hans. Deb. 3rd Ser. 1066.

whom afterwards acquaints the house (in the Lords, in his place, or at the table; and, in the Commons, at the bar) with the answers which were returned.[1]

Communications from the royal family.

Communications are also made to both houses by members of the royal family, which are either delivered by members in their places,[2] or are conveyed to the house by letters addressed to the Speaker.[3]

Responsible ministers in both houses.

Such being the direct and formal communications between the Crown and Parliament, it may be added that the presence of ministers, in both houses, maintains the closest relations of the Crown with the legislature. The representation of every department of the State, by members of Parliament, and the principles of ministerial responsibility, long since established in our constitution, bring the executive government and the legislature into uninterrupted intercourse, and combined action. Where no formal communication, between the Crown and Parliament, is technically required, the introduction of a measure by her Majesty's ministers, attests the royal approval; and when amendments are made, by either house, which ministers accept instead of abandoning the measure, or resigning office, they are under an obligation to advise the Queen to signify her royal assent to the bill, when it has been agreed to by both houses. Again, when the measures or policy of ministers are condemned by Parliament, a change of administration restores agreement between the executive and the legislature. Ministers are responsible alike to the Crown and to Parliament, and so long as they are able to retain the confidence of both, the harmonious action of the several estates of the realm is secured.[4]

[1] 53 Lords' J. 369; 72 Ib. 53; 95 Com. J. 95; 105 Ib. 539; 52 Hans. Deb. 3rd Ser. 343; Ib. 18th July 1850.

[2] 58 Com. J. 211; 75 Ib. 288.

[3] 64 Ib. 86; 68 Ib. 253; 69 Ib. 324. 433.

[4] For further illustrations of the constitutional relations of ministers with Parliament, see 4 Macaulay, Hist. 430 *et seq.*; May, Const. Hist. chap. 7; 2 Tod, Parl. Government, 231 *et seq.*; Bagehot on the English Constitution; Mr. Gladstone's "Kin Beyond Sea," in North American Review, September 1878; Gleanings of Past Years, vol. i.

CHAPTER XVIII.

PROCEEDINGS OF PARLIAMENT IN PASSING PUBLIC BILLS: THEIR SEVERAL STAGES IN BOTH HOUSES. ROYAL ASSENT.

General nature of a bill.

It has been explained in previous chapters, in what manner each separate question is determined in Parliament; and the proceedings upon bills will require less explanation, if it be borne in mind that all the rules in relation to questions and amendments are applicable to the passing of bills. If bills were not a more convenient form of legislation, both houses might enact laws in the form of resolutions, provided the royal assent were afterwards given. In the earlier periods of the constitution of Parliament, all bills were, in fact, prepared and agreed to in the form of petitions from the Commons, which were entered on the Rolls of Parliament, with the king's answer subjoined; and at the end of each Parliament the judges drew up these imperfect records into the form of a statute, which was entered on the Statute Rolls.[1] This practice was incompatible with the full concurrence of the legislature; and matters were often found in the Statute Rolls which the Parliament had not petitioned for, or assented to. Indeed, so far was this principle of independent legislation occasionally carried, that, in the 13th and 21st of Richard II., commissions were appointed for the express purpose of completing the legislative measures, which had not been determined during the sitting of Parliament.[2] These usurpations of legislative power were met with remonstrances in particular instances,[3] and at length in the 2nd Henry V.,

Ancient mode of enacting laws.

[1] Rot. Parl. *passim*.

[2] 3 Rot. Parl. 256 (13 Ric. II.); Ib. 368 (21 Ric. II.); Stat. 21 Ric. II. c. 16.

[3] 3 Rot. Parl. 102 (5 Ric. II. No. 23); 3 Ib. 141 (6 Ric. II. No. XXX.); 3 Ib. 418 (1 Hen. IV.); Hale, Hist. of the Common Law, 14; Reeves, Hist. of the English Law; Pref. to Cotton's Abridgment; Ruffhead's Statutes, Preface.

the Commons prayed that no additions or diminutions should in future be made, nor alteration of terms which should change the true intent of their petitions, without their assent; for they stated that they had ever been "as well assenters as petitioners." The king, in reply, granted "that henceforth nothing should be enacted to the petitions of the Commons contrary to their asking, whereby they should be bound without their assent; saving always to our liege lord his real prerogative to grant and deny what him lust, of their petitions and askings aforesaid."[1] No distinct consequences appear to have immediately followed this remarkable petition; and, so long as laws were enacted in the form of petitions, to any portion of which the king might give or withhold his assent, and attach conditions or qualifications of his own, the assent of the entire Parliament was rather constructive than literal; and the Statute Rolls, however impartially drawn up, were imperfect records of the legislative determinations of Parliament.

Origin of modern system.

But petitions from the Commons, which were originally the foundation of all laws, were ultimately superseded; and in the reign of Henry VI. bills began to be introduced, in either house, in the form of complete statutes, which were passed in a manner approaching that of modern times, and received the distinct assent of the king, in the form in which they had been agreed to by both houses of Parliament. It is true that Henry VI. and Edward IV. occasionally added new provisions to statutes, without consulting Parliament;[2] but the constitutional form of legislating by bill and statute, agreed to in Parliament, undoubtedly had its origin and its sanction in the reign of Henry VI.

Similarity of practices in both houses.

Before the present method of passing bills in Parliament is entered upon, it may be premised that the practice of the Lords and Commons is so similar in regard to the several stages of bills, and the proceedings connected with them,

[1] 4 Rot. Parl. 22, No. X.

[2] Ruffhead's Statutes, Preface. Cotton's Abridgment, Preface.

that, except where variations are distinctly pointed out, a statement of the proceedings of one house is equally descriptive of the proceedings of the other.

Where bills originate.

As a general rule, bills may originate in either house: but the exclusive right of the House of Commons to grant supplies, and to impose and appropriate all charges upon the people,[1] renders it necessary to introduce by far the greater proportion of bills into that house. Bills relating to the relief and management of the poor, for example, involve, almost necessarily, some charge upon the people, and generally originate with the Commons. Prior to 1868, two bills only relating to the poor had been sent to the Commons by the Lords during the present century. The first, in 1801, was laid aside *nem. con.*, when Mr. Speaker called attention to it:[2] the second, in 1831, was received but not proceeded with, the first reading being postponed for three months.[3] But in 1868, a poor relief bill was received from the Lords, with all the rating clauses printed in red ink, which were inserted by the Commons, according to a comparatively recent custom.[4] But amendments involving the principle of a charge upon the people have frequently been made to such bills by the Lords, which, on account of the extreme difficulty of separating them from other legislative provisions to which there was no objection, have been assented to by the Commons.[5] Such amendments, however, ought not to interfere with regard to the amount of the tax, the mode of levying or collecting it, the persons who shall pay or receive it, the manner of its appropriation, or the

Poor law bills.

[1] See 8 Com. J. 311. 602; and Chapter XXI. on SUPPLY.

[2] 56 Com. J. 88.

[3] 86 Ib. 784.

[4] See *infra*, Chapter XXI. on SUPPLY.

[5] Poor Law Amendment (England) Bill, 1834; 25 Hans. Deb. 3rd Ser. 1207. Irish Poor Relief Bill, 1838; 44 Hans. Deb. 3rd Ser. 575. Municipal Corporations (Ireland) Bill, 1838; 44 Hans. Deb. 3rd Ser. 871. Poor Relief (Ireland) Bill, 1st June 1847; 92 Hans. Deb. 3rd Ser. 1299; 94 Ib. 457. Poor Relief (Ireland) Bill, 27 July 1849; 107 Hans. Deb. 3rd Ser. 1043. Poor Law Loans Bill, 1871 (special entry). Poor Law Amendment Act, 1876, Amendment Bill, 1878, &c.

persons who shall have the control and management of it.[1] In any of these cases, the Commons may insist upon their privileges; and it is only by waiving them in particular instances, and under special circumstances, that such amendments have ever been admitted. This restriction, however, has not been held to apply to bills comprising charges upon the property and revenues of the Church[2] or Queen Anne's bounty.[3] But it was ruled that a bill could not be received from the Lords, affecting the revenues arising, under the Church Temporalities (Ireland) Act, from a tax, rate or assessment imposed upon all benefices.[4] In 1878, a bill applying a million from the surplus revenues of the disestablished church in Ireland, to intermediate education, was received from the Lords, and passed without objection.[5] Bills have also been brought from the Lords, affecting the property and land revenues of the Crown, the proceeds of which have not been directed, by any statute, to be carried to the Consolidated Fund.[6]

Restitution bills.

On the other hand, the Lords claim that bills for the restitution of honours and in blood should commence with them; and such bills are presented to that house by her Majesty's command.[7] And in the Commons the Queen's consent is signified before the first reading. This form having been inadvertently omitted in Drummond's (Duke de Melfort's) Restitution Bill in 1853, the proceedings were declared null and void; and, the Queen's consent being signified, the bill was again read a first time.[8] Bills of attainder, and of pains and penalties, have generally originated in the House of Lords, as partaking of a judicial character. Any bill con-

[1] See Speaker's ruling on Municipal Corporations (Ireland) Bill, 1839; 50 Hans. Deb. 3rd Ser. 3.

[2] Bishoprick of Manchester Bill, 1847: Ecclesiastical Commissioners (England) Bill, 1843.

[3] Church Endowment Bill, 1843.

[4] 6 & 7 Vict. c. 57; MS. Book of Precedents.

[5] Mr. Speaker Brand's Note-Book.

[6] Waste Lands (Australia) Bill, 1846.

[7] Maxwell's Restitution Bill, 1848; Drummond's Restitution Bill, 1853; Lord Lovat's Restitution Bill, 1854; Carnegie's Restoration Bill, 1855.

[8] 108 Com. J. 576. 578.

cerning the privileges or proceedings of either house, should, in courtesy, commence in that house to which it relates.[1] But bills affecting privileges of the other house have, nevertheless, been admitted without objection.[2] Amendments, however, concerning the privileges and jurisdiction of the Lords, have given rise to discussions in both houses.[3] A bill for a general pardon, or act of grace, as it is commonly termed, originates with the Crown, and is read once only in each house, all the members being uncovered,—after which it receives the royal assent in the ordinary form.[4] Such a bill cannot be amended by either house of Parliament; but must be accepted in the form in which it is received from the Crown, or rejected.[5] An Act of indemnity, protecting persons against the consequences of any breach of the law, is proceeded with as an ordinary bill.[6]

Act of grace or general pardon.

Bills are divided into the two classes, of public and private bills. The former, relating to matters of public policy, are introduced directly by members of the house, while the latter are founded upon the petitions of parties interested. As the

Public and private bills.

[1] 3 Hatsell, 69. 2 Stephen's Blackstone, 372.

[2] Votes by Proxy Abolition Bill, 1832; 11 Hans. Deb. 3rd Ser. 1156. Election of Scotch Representative Peers Bill, 1869; 194 Hans. Deb. 3rd Ser. 988; Members' Seats Vacating Bill (Lords), 8th June 1832; 64 Lords' J. 286. Lord Radnor thought the other House "might take a technical objection to the measure, on the ground that it was one which ought not to have arisen in the House of Lords." Lord Northampton did not think "the subject was one with which their lordships had a right to interfere." 13 Hans. Deb. 3rd Ser. 611. 1086. Bishops in Parliament Bills, 1834, 1836 and 1837. The Irish bishops were excluded from their seats in the House of Lords, in 1869, by a bill brought from the Commons. Lords' Spiritual Bill, 1870; 125 Com. J. 269.

[3] See debate in the Lords on the Court of Chancery Improvement Bill (then in the Commons), 23rd June 1851; 117 Hans. Deb. 3rd Ser. 1069; and debates in Lords and Commons in 1873 on amendments proposed to be made in the Commons to the Judicature Bill, by which appeals from the courts of Scotland and Ireland were to be withdrawn from the House of Lords; 217 Hans. Deb. 3rd Ser. 10. 154.

[4] 14 Lords' J. 502, 503 (1690); 25 Com. J. 406 (1747).

[5] See 4 Burnet's Own Time, 121. 3 Lord Macaulay's Hist. 575.

[6] 96 Com. J. 542; 121 Ib. 239; 135 Ib. 371 (Lord Plunket) 1880.

distinctive character of private bills, and the proceedings of Parliament in relation to them, will form the subject of the Third Book, the present chapter is strictly confined to the passing of bills of a public nature. The greater part of these proceedings apply equally to both classes of bills: but the progress of private bills is governed by so many peculiar regulations and Standing Orders, in both houses, that an entire separation of the two classes can alone make the progress of either intelligible.

Public bills presented in the Lords.

In the House of Lords, any peer is at liberty to present a bill, and to have it laid upon the table, without notice:[1] but in the Commons, a member must obtain permission from the house before he can bring in a bill. Having given notice, he moves "that leave be given to bring in a bill," adding the proper title of his proposed measure. In making this motion, he may explain the object of the bill, and give reasons for its introduction; but unless the motion be opposed, this is not the proper time for any lengthened debate upon its merits. When an important measure is offered by a minister or other member, this opportunity is frequently taken for a full exposition of its character and objects: but otherwise, debate should be avoided at this stage, unless it be expected that the motion will be negatived, and that no future occasion will arise for discussion. If the motion be agreed to, the bill is ordered to be prepared and brought in by the mover and seconder,[2] sometimes with other members,[3] to whom other members again are occasionally added by the house.[4] Instructions may be given to these

Ordered in the Commons.

[1] 3 Hans. Deb. 24; 13 Ib. 3rd Ser. 1188. By Standing Order 3rd July 1848, the name of the lord presenting a bill is printed in the minutes.

[2] This order is ordinarily merely formal: but on the 20th Feb. 1852, Lord Palmerston having carried an amendment to the title of the Militia Bill, as proposed by Lord J. Russell, a discussion arose upon the question, by whom the bill should be brought in; 119 Hans. Deb. 3rd Ser. 876.

[3] The inconvenient practice has arisen, of late years, of unnecessarily multiplying the names of members ordered to bring in a bill.

[4] 91 Com. J. 613. 632; 113 Ib. 92, &c.

gentlemen to make provision in the bill, for matters not included in the original motion and order of leave;[1] or to make provision pursuant to resolutions of the house;[2] and sometimes the orders that certain gentlemen do bring in bills are discharged, and other gentlemen are appointed to bring them in.[3] In nominating these gentlemen, however, a debate is not allowed upon the merits of the bill itself.[4] Amendments have occasionally been made to a question for leave to bring in a bill, by which its proposed title has been altered.[5] In this way, on the 20th February 1852, the title of the Militia Bill, as proposed by Lord John Russell, was amended, on division. The ministers resigned, and a bill was afterwards brought in by the new administration, in conformity with the amended order.[6] A bill has been ordered as an amendment to a question for a resolution of the house;[7] and on the 17th April 1834, a bill to admit Dissenters to the Universities was ordered, as an amendment to a question for an address to the Crown for that purpose.[8] In 1869, a bill for the Disfranchisement of Freemen in the City of Dublin was ordered as an amendment to a question for the issue of a new writ.[9]

Preliminaries.

In various cases, proceedings preparatory to the bringing in of bills, first occupy the attention of the house. Sometimes resolutions have been agreed to by the house, and bills immediately ordered, as in the cases of the Liverpool Elections Bill,[10] and the Bribery and Treating Bill,[11] in 1831: at other times, resolutions of the house in a former session have been read, and bills ordered thereupon.[12] On the 5th March 1811, resolutions of a former session, relating to the slave trade,

[1] 106 Com. J. 347; 107 Ib. 368, &c.
[2] 129 Ib. 114.
[3] 110 Ib. 35. 48; 124 Ib. 40; 131 Ib. 33, &c.
[4] Public Works (Manufacturing Districts) Bill (Mr. Hennessy, 8th June 1863); 171 Hans. Deb. 3rd Ser. 478. 521.
[5] 70 Com. J. 62; 71 Ib. 430.
[6] 107 Ib. 68. 131.
[7] 81 Ib. 61.
[8] 22 Hans. Deb. 3rd Ser. 900.
[9] 124 Com. J. 256.
[10] 86 Ib. 821.
[11] Ib.
[12] 62 Ib. 588; 75 Ib. 65; 82 Ib. 442.

were read, and a bill ordered *nem. con.*[1] In 1833, the introduction of the bill for the abolition of slavery was preceded by several resolutions.[2] The Regency Bills of 1789 and 1811 were founded upon resolutions which had been reported from a committee of the whole house, communicated to the House of Lords, and agreed to, and afterwards presented by both houses to the Prince of Wales and the Queen.[3] On other special occasions, resolutions agreed to by both houses, at a conference, have preceded the introduction of a bill.[4] It has not been uncommon, also, to read parts of speeches from the throne, Queen's messages, Acts of Parliament, entries in the Journal, reports of committees, or other documents in possession of the house, as grounds for legislation, before the motion is made for leave to bring in a bill.[5] On the 30th April 1868, a question, that the oath taken by Roman Catholic members previous to the alteration of their oath in 1866, be read by the clerk at the table, was negatived.[6] But the most frequent preliminary to the introduction of bills is the report of resolutions from a committee of the whole house, in conformity with Standing Orders applicable to such bills. The chairman is sometimes directed by the committee to move the house for leave to bring in a bill or bills; and sometimes the resolutions are simply reported, and after being agreed to by the house, a bill is ordered thereupon; or upon some only;[7] or a bill upon some of the resolutions, and other bills upon other resolutions.[8] Sometimes several resolutions have been reported, and agreed to, and another resolution directing the

[1] 66 Com. J. 148.

[2] 88 Ib. 482.

[3] 27 Hans. Parl. Hist. 1122. 18 Hans. Deb. 1st Ser. 418, &c. 1 May, Const. Hist. 180 *et seq.* (7th edit.)

[4] Slave Trade, 1806; 61 Com. J. 393. 401. Renewal of East India Company's Charter, 1813; 78 Ib. 595.

[5] 82 Ib. 442; 91 Ib. 639; 95 Ib. 470; 107 Ib. 186; Royal Titles Bill, 1876; 131 Ib. 47.

[6] 123 Com. J. 143; 191 Hans. Deb. 3rd Ser. 1582.

[7] 81 Ib. 44; 86 Ib. 669; 123 Ib. 113.

[8] 80 Ib. 471; 103 Ib. 981. Blackwater Bridge, 1873; 128 Com. J. 249.

chairman to move for a bill pursuant to the said resolutions, has been reported separately, on which the chairman immediately proceeded to move for a bill.[1]

Bills originating in committee.

Certain classes of bills are required to originate in a committee of the whole house; and if, by mistake, this form has been omitted, all subsequent proceedings are vitiated, and must be commenced again. By two Standing Orders of the 9th and 30th April 1772, it is ordered,

Relating to religion and trade.

"That no bill relating to religion, or trade, or the alteration of the laws concerning religion, or trade, be brought into this house, until the proposition shall have been first considered in a committee of the whole house, and agreed unto by the house."[2]

By a Standing Order of the 20th March 1707,

Public money.

"This house will not proceed upon any petition, motion, or *bill*, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a committee of the whole house."[3]

By a Standing Order, 20th March 1866,[4]

Charge upon the subject.

"If any motion be made in the house for any aid, grant, or charge upon the public revenue, whether payable out of the consolidated fund, or out of monies to be provided by Parliament, or for any charge upon the people, the consideration and debate thereof shall not be presently entered upon, but shall be adjourned till such further day as the house shall think fit to appoint, and then it shall be referred to a committee of the whole house, before any resolution or vote of the house do pass therein."

Construction of rules; as to religion.

The Standing Order concerning religion has usually been construed as applying to religion in its spiritual relations—its doctrines, profession or observances: but not to the temporalities or government of the Church, or other legal incidents of religion. The distinction, however, between spiritual and temporal matters is often so nice, that a correct and uniform application of the rule is not always observable in the precedents which are to be found in the Journals. In 1801,

[1] 113 Com. J. 235.
[2] 14 Ib. 211; 33 Ib. 678. 714.
[3] 15 Ib. 367; 16 Ib. 405.
[4] Being the resolution 18th Feb. 1667, and Standing Order 25th June 1852, amended.

the Clerical Disabilities Bill (Mr. Horne Tooke's Act), as it merely concerned the legal *status* of clergymen, and not their spiritual rights or functions, was ordered without a preliminary committee; and, in 1881, a bill for the repeal of that act was treated in the same manner. But the Clerical Disabilities Removal Bill of 1870, as it affected the spiritual status of ordained priests, and contained provisions relating to the performance of religious duties, and the holding of preferments by ministers of the Church of England, originated in committee; and also, in 1873, a bill for the amendment of that act.[1] The Roman Catholic Relief Bills in 1825, 1829, and 1848, were brought in upon resolutions of committees;[2] and bills for removing civil disabilities of the Jews;[3] for the relief of dissenters;[4] for amending the Acts relating to the Roman Catholic College of Maynooth;[5] for altering the oaths of members;[6] for the abolition of religious tests in the Universities of Oxford, Cambridge and Dublin;[7] for amending the laws relating to burials;[8] the consecration of churchyards;[9] for the amendment of the law relating to cemeteries;[10] and affecting consecration and concerning endowed schools,[11] have originated in committee: while, in 1833, bills to enable Quakers, Moravians, and Separatists to make an affirmation instead of an oath, were ordered without any previous resolution of a committee.[12] On the 6th June 1816, the Standing Order was held to apply to a bill for the punishment of persons disturbing congregations in a Roman Catholic chapel, or assaulting

[1] 134 Com. J. 9.

[2] 80 Ib. 144; 84 Ib. 116; 103 Ib. 22. There were, however, exceptions to this practice in 1846 and 1847; 101 Com. J. 59; 102 Ib. 88.

[3] 88 Com. J. 287; 89 Ib. 222; 91 Ib. 418; 103 Ib. 124. But in 1830 and 1841, it was otherwise; 23 Hans. Deb. 3rd Ser. 1287; 96 Com. J. 35.

[4] 68 Com. J. 451.

[5] 100 Ib. 193.

[6] 104 Ib. 74; 121 Ib. 63; 135 Ib. 250; Votes, 1883, p. 18.

[7] 12th Feb. 1867; 18th Feb. 1868; 127 Com. J. 11, &c.

[8] 1824; 79 Com. J. 181. 1862; 117 Ib. 99; Votes, 6th Dec. 1878.

[9] Consecration of Churchyards Bill, 1867; Votes, 6th Dec. 1878.

[10] 137 Ib. 17; Votes, 1883, p. 21.

[11] 1860; 115 Ib. 20. In the same year the Charity Trustees Bill, having the same object, was ordered in, upon motion.

[12] 88 Ib. 305. 365.

any Roman Catholic clergyman while officiating therein.[1] In 1857, the Oaths Validity Bill was held not to concern religion, as it did not involve any alteration of the oaths, but simply related to the manner of taking them.[2] On the 27th May 1862, the order was ruled to extend to a bill to amend the law relating to the religious instruction of Roman Catholic prisoners.[3] In 1880, the Parliamentary Disqualification Bill, which provided that atheism should be a disqualification for sitting and voting in Parliament, and the preamble of which recited that "the Christian religion is part and parcel of the law of the realm," was held to be within the terms of the Standing Order.[4] The Irish Church Bill, 1869, was founded upon resolutions of a committee of the whole house, as it contained provisions affecting the articles, doctrines, rights, and discipline of that Church.[5] On the other hand, the Church Temporalities (Ireland) Bill of 1833, which may be said to have reconstituted the church government in that country, was not, on that account, required to originate in a committee.[6] So also the Tithe Commutation Bills; the bills for carrying into effect the recommendations of the ecclesiastical commissioners, in regard to the revenues of the Church of England;[7] and various bills relating to the building of churches and chapels, the holding of benefices in plurality, the enforcing the residence of the clergy, and other matters affecting the Church,[8] have all been introduced upon motion, without any previous resolution of a committee. In 1848, a bill relating to Roman Catholic charities was brought in without a committee, as it concerned revenues or temporalities, and not religion.[9] And in 1851, the Ecclesiastical Titles Bill was held, after full consideration,

[1] 71 Com. J. 431. 34 Hans. Deb. 1012.
[2] 147 Hans. Deb. 3rd Ser. 135.
[3] 167 Ib. 61.
[4] 135 Com. J. 301; Mr. Speaker Brand's Note-Book.
[5] 124 Com. J. 57.
[6] 88 Ib. 35.
[7] 91 Ib. 17; 93 Ib. 377; 94 Ib. 29.
[8] 3 & 4 Vict. c. 113; 102 Vict. c. 106; 14 & 15 Vict. c. 72, &c.
[9] 102 Com. J. 22.

not to come within the Standing Order[1]. In 1860, the Religious Worship Bill, concerning the celebration of divine worship in private houses, was held not to concern religion,—two previous acts on the same subject having been introduced without a preliminary committee.[2] The Ecclesiastical Vestments Bill was also ruled not to concern religion, in the sense of the Standing Order, but only church government and discipline.[3] And in 1882, the Contumacious Clerks Bill, which amended the Church Discipline Act, and the Public Worship Regulation Act, was held to come under the same category.[4] On the 22nd July 1863, objection was taken to a general bill for repealing obsolete statutes, that it concerned religion and trade: but as the bill had come from the Lords, the rule did not apply; nor would the objection otherwise seem to have been well founded.[5]

Trade.

The Standing Order regarding trade was for many years construed as extending to such bills only as related to foreign commerce, and the import and export of commodities; and was not applied to bills affecting particular trades, or the internal trade of the country;[6] but of late years the house has reverted to what appears to have been the original intention of the Standing Order, which was probably designed to embrace the same classes of bills as had formerly been within the province of the grand committee for trade. Accordingly, it has been held to apply not only to trade generally, but also to any particular trade, if directly affected by a bill.[7] On this account, bills to regulate the sale of beer,[8] of bread,[9]

[1] 116 Hans. Deb. 3rd Ser. 872.

[2] 115 Com. J. 75; 156 Hans. Deb. 3rd Ser. 1204.

[3] 29th Feb. 1860; 115 Com. J. 98; 156 Hans. Deb. 3rd Ser. 2043.

[4] 137 Com. J. 17.

[5] 172 Hans. Deb. 3rd Ser. 1213; Private mem.

[6] Between 1801 and 1820 upwards of fifty bills were brought in upon motion, relating to the sale or manufacture of bread, flour, butter, malt, hops, linen, cotton, flax, lace, silk, wool, leather, coals, fire-arms, and other articles.

[7] Mirror of Parl. 1840, pp. 1108, 1109.

[8] 106 Com. J. 205. 362; 109 Ib. 295; 110 Ib. 420.

[9] 88 Ib. 673; 103 Ib. 747.

and of marine stores,[1] and for the regulation of public houses, refreshment houses, and beer houses,[2] or to amend the licensing laws,[3] have been required to originate in a committee; but in 1882 and 1883, bills to restrain the adulteration of beer were brought in upon motion.[4] In 1840, the Copyright of Designs Bill was withdrawn, as affecting the trade of calico printers and others,[5] and in subsequent sessions was brought in upon resolution from a committee. Several bills relating to the copyright of books had been brought in upon motion;[6] and on an objection being taken, on the 19th February 1840, that a copyright bill related to trade, the Speaker held that it did not directly interfere with trade, in any sense in which that term is used in the Standing Orders.[7] Some copyright bills were afterwards introduced in committee;[8] but it was ruled in 1881, in accordance with a former decision, that they may properly be brought in upon motion.[9] So also bills relating to the Bank of England,[10] joint stock banks, and banking,[11] have originated in committee. In 1857, the Bank Issues Indemnity Bill originated in committee, as it not only indemnified the bank for past illegal issues, but contained a clause authorizing a continued excess of issues for a limited time. Numerous bills, however, relating to joint stock banks, have been ordered without a previous committee.[12] Bills relating to partnership and joint stock companies have originated in committee:[13] but a bill for the registration of partnerships has been ordered upon motion.[14] In 1848, the Sheep, &c. Diseases Bill, being

[1] 159 Hans. Deb. 3rd Ser. 724.

[2] 186 Ib. 160. Votes, 6th Dec. 1878, &c.

[3] Votes, 6th Dec. 1878.

[4] 137 Com. J. 62. Votes, 1883, p. 20.

[5] 95 Com. J. 176.

[6] 97 Ib. 83. The Copyright Act, 54 Geo. III. c. 156, had been brought in upon motion.

[7] Mirror of Parl. 1840, p. 1110.

[8] Votes, 6th Dec. 1878.

[9] 136 Com. J. 130.

[10] Bank Act, 1844; Bank Issues Indemnity Bill, 1857–58.

[11] 94 Com. J. 468; 100 Ib. 468; 112 Ib. 239.

[12] *E. g.* in 1842, 1854, 1855, 1856, and 1858.

[13] 111 Com. J. 13.

[14] 113 Ib. 129.

merely sanitary, was ordered to be brought in without a committee;[1] but in the same year, a bill regulating the importation of foreign sheep, &c. was introduced in committee;[2] and again in 1866, the Cattle Plague Bill, and the Cattle Diseases Bill, which interfered with the importation of cattle, were also introduced in committee.[3] On the 6th February 1844, the Speaker decided that a bill to regulate the employment of children in factories, did not come within the meaning of the Standing Order.[4] But bills regulating the coalwhippers and ballast-heavers of the port of London, have been held to come within the Standing Order.[5] On several occasions bills for the regulation of fairs and markets have been ordered, without a committee, having been considered in the light of police regulations, rather than of trade.[6] Bills for the regulation of weights and measures have been treated as questions of public policy, affecting the whole community, and not merely the interests of trade.[7] Bills in restraint of Sunday trading have been regarded as measures of police and public decency, and not concerning trade so as to require a committee.[8] And so also of bills for regulating the sale of liquors and the hours for closing public houses on Sunday.[9] The Burgh Harbours (Scotland) Bill, 1852, was held to be one concerning trade, and having been introduced without a committee, was withdrawn;[10] and other bills concerning harbours have since originated in committee.[11] But since 1880, it has been held that provisional order bills, relating to piers and harbours, may be brought in, without a preliminary committee. It has been

[1] 103 Com. J. 863.

[2] Ib. 857.

[3] 121 Ib. 55.

[4] 72 Hans. Deb. 3rd Ser. 286.

[5] 98 Com. J. 349; 101 Ib. 246; 106 Ib. 140. 120 Hans. Deb. 3rd Ser. 784.

[6] Fairs and Markets (Ireland) Bill, 1854, 1855, 1857, and 1858.

[7] 114 Com. J. 235; 115 Ib. 370.

[8] Sunday Trading Bills, 1833, 1834, 1835, 1838, 1844, 1848, 1849, 1851, 1855, 1863, and 1868.

[9] Sale of Liquors on Sunday Bills, 1867 and 1868; Sale of Liquors (Ireland) Bill, 1867; Intoxicating Liquors (Ireland) Bill, 1878; Intoxicating Liquors (Wales) Bill, 1881; 136 Com. J. 12, &c.

[10] 107 Com. J. 105.

[11] 117 Ib. 271, &c.

held that the Standing Orders extend to the trade and taxation of a British colony, as well as to the trade and taxation of the United Kingdom. The Australian Colonies Government Bill, 1849, contained clauses relating to the trade and commerce, and altering the customs duties of those colonies, and the bill was withdrawn, and another bill presented with the taxing clauses printed in italics.[1] And other bills of the like character have been founded upon the resolutions of committees.[2]

Grants of public money.

No grant of public money is ever attempted to be made in a bill, without the prior resolution of a committee: but bills are often introduced in which it becomes incidentally necessary to authorize the application of money to particular purposes. In order to accomplish this object without any violation of the Standing Order, the money clauses are originally inserted in the bill in italics: a committee of the whole house is afterwards appointed to consider of authorizing the advance of money (the Queen's recommendation being signified); and, on their report being made and agreed to by the house, the committee on the bill make provision accordingly.[3] Formerly an instruction was given for that purpose: but since the Standing Order of the 19th July 1854, enabling the committee on the bill to make any amendment relevant to the subject-matter of the bill, the practice of moving an instruction in such cases has been discontinued. When the main object of a bill is the grant of money, it is invariably brought in upon the resolution of a committee, in the first instance. But several important bills, obviously designed to create a public charge, yet containing other provisions not immediately connected with the proposed grant of money, have been brought in, upon motion, the money clauses being printed in italics.[4] In such cases the principle of the bill is discussed,

[1] (Clauses 28, 29.) 104 Com. J. 424 (1849).

[2] Australian Colonies Government Bill, 1850; 105 Com. J. 54. Canada Bill, 1823; 78 Ib. 332. Newfoundland Appropriation of Duties Bill, 1832; 87 Ib. 392.

[3] Public Offices (Site and Approaches) Bill, 1865; 177 Hans. Deb. 3rd Ser. 1308, &c., &c.

[4] Lord G. Bentinck's Railways (Ireland) Bill, 4th Feb. 1847; Electric

and if approved, the necessary pecuniary provision is subsequently made: otherwise the bill is either lost upon the second reading, or dropped in consequence of the recommendation of the Crown being withheld. Where it is proposed to authorize advances on the security of public works, out of monies already applicable to such purposes, no previous vote in committee is necessary;[1] but where additional funds are to be provided for such advances, they must be first voted in committee.[2] And in 1880, it was ruled that advances proposed to be made to Irish landlords or tenants, being wholly beyond the scope and objects of the Public Works Loans Acts, must be first considered in committee, upon the recommendation of the Crown.[3] Bills relating to savings banks, when creating a charge upon the Consolidated Fund, or other public liabilities, have been founded upon the resolutions of committees:[4] but when relating to matters of a legal or administrative character only, they have been ordered at once.[5] In 1882, it was proposed by the University Education (Ireland) Bill to direct grants, made by former acts, in favour of the Queen's Colleges, to the use of the Royal University of Ireland, but as these grants, whether payable from the Consolidated Fund, or from monies to be provided by Parliament, were not to be increased, it was held that no preliminary resolution was required.

Chancery fee funds.

The fee funds of the Court of Chancery have been held not to be public money within the orders of the house.[6] Nor is the appropriation of the proceeds of an existing charge,

Telegraphs Bill, 1st April 1868; Railways (Ireland) Bill, 5th March 1872; Mr. Speaker's ruling, 209 Hans. Deb. 3rd Ser. 1952.

[1] Employment of Poor (I.), 16th May 1822. Railways (I.) Bill, 1847 (advance of 16,000,000*l.*), (Lord G. Bentinck). Drainage (I.) Act, 5 & 6 Vict. c. 89. Public Works (Manufacturing Districts) Bill, 1863. Drainage (I.) Act, 9 Vict. c. 4, ss. 10, 31, 51. Public Works (I.) Act, 9 Vict. c. 1.

[2] Exchequer bills for temporary relief, 1817; 72 Com. J. 220; 57 Geo. III. c. 34.

[3] Distress (Ireland) Bill (Compensation for Disturbance).

[4] *E.g.* 1854–55, 1857, 1863 (Post Office Savings Banks), and 1875.

[5] *E.g.* 1853 and 1862.

[6] Courts of Justice Building (Money) Bill, 14th March 1862; 165 Hans. Deb. 3rd Ser. 1561.

where no new burden is imposed, required to originate in committee.[1]

Since the passing of the Irish Church Act, it has been uniformly held that the church funds, accruing under that act, are not public monies within the meaning of the Standing Order. In 1878, the Intermediate Education (Ireland) Bill, which appropriated a portion of those funds, was received, without objection, from the Lords. And in 1882, the Arrears of Rent (Ireland) Bill, comprised clauses imposing charges upon those funds, which were agreed to by the Commons, without a preliminary committee, and these clauses were amended by the Lords.[2] Irish Church funds.

The house are no less strict in proceedings for levying a tax, than in granting money; and it is the practice, without any exception, for all bills that directly impose a state charge upon the people, to originate in a committee of the whole house. To bring a proposition under this rule, however, it must directly involve a charge upon the people, it not being sufficient that it would diminish the public income. Thus, on the 30th June 1857, a bill was brought in to repeal section 27 of the Superannuation Act, which required an abatement to be made from official salaries; it being held, after consideration of the point, that this was merely a diminution of public income, similar to the reduction of a tax, and was not an increase of the salaries, nor of the public charge in respect of salaries. It has been held that the transfer of certain charges from the Consolidated Fund to the supplies annually voted by Parliament, did not require a preliminary committee, as no increased charge upon the people was proposed.[3] Nor has this rule been held to apply to bills authorizing the levy or application of rates for local purposes, by local officers or authorities representing, or acting on behalf of, the rate- Tax or charge upon the people. Local taxation.

[1] Thames Embankment Bill, 18th March 1862; 165 Hans. Deb. 3rd Ser. 1826. In this case, however, the London coal and wine duties being a local tax,—though affecting trade,—would not have been subject to this rule.

[2] 134 Com. J. 332. 335; 137 Ib. 451.

[3] 147 Hans. Deb. 3rd Ser. 1220.

payers.[1] On the 15th July 1858, objection was taken to the introduction of a bill for the main drainage of the metropolis, without a preliminary committee, as it was alleged to be a bill for imposing charges upon the people: but as it appeared that the expense of the proposed works was to be paid out of local rates upon the metropolis, and that it was intended to propose a resolution, in a committee of the whole house, for a Treasury guarantee for the repayment of money borrowed on the security of those rates, it was ruled that the bill could at once be brought in,—local rates never having been regarded as coming within the Standing Order.[2] Similar objections were also taken, in 1862, to the Thames Embankment Bill; but were overruled.[3] On the 16th July 1858, exception was taken to a clause in the Corrupt Practices Prevention Bill, that it imposed a charge upon county and borough rates: but the chairman held that such a charge, not being for public revenue, could regularly be proposed in committee on the bill, without a preliminary resolution.[4] Neither has the rule been construed to apply to bills imposing charges upon any particular class of persons for their own use and benefit. Thus, in 1848, the Merchant Seamen's Fund Bill, imposing a duty of a shilling a ton on all ships in the merchant service, for raising a fund for the support of aged seamen and the maintenance of lights, was brought in without any previous vote of a committee, authorizing such duty.[5] And again, in 1850, a similar bill was introduced, authorizing a deduction from the

[1] Metropolis Police Bill, 84 Com. J. 233. Coal Trade (Port of London) Bills, 86 Ib. 558. Poor Law Amendment Bill, 1834. Municipal Corporations Bill, 1835. Poor Relief (Ireland) Bill, 93 Com. J. 90. Collection of Rates Bill, 1839. Highway Rates Bill, 94 Ib. 363. Prisons (Scotland) Bill, 94 Ib. 22. Metropolis Local Management Bills, 1855 and 1858. Union Relief Aid (Distress in Manufacturing Districts) Bill, 1862. Rating Bill, Valuation Bill, and Consolidated Rate Bill, 1873. But the Rate in Aid Bill (Irish Famine), 1849, originated in committee, as it levied a general rate, the funds being under the management of government officers.

[2] 151 Hans. Deb. 3rd Ser. 1519.

[3] 165 Ib. 1826.

[4] 151 Ib. 1601.

[5] 103 Com. J. 57.

wages of masters, seamen, and apprentices, to form a fund for their relief.[1] The rule has generally been held to apply to bills authorizing the imposition or appropriation of taxes in the colonies;[2] though such bills would appear rather to fall within the principle of local taxation. In 1833, notice was taken that the Church Temporalities Bill (which proposed to levy "an annual tax" upon all benefices in lieu of first fruits) should have originated in a committee. Before the house decided upon this point, a select committee was appointed to examine precedents, and on receiving their report, in which it was stated that no precedent precisely similar had been discovered, but "that the general spirit of the Standing Orders and resolutions of the house required that every proposition to impose a burthen or charge on any class of the people, should receive its first discussion in a committee of the whole house,"[3] the order for reading the bill a second time was discharged, and the bill was withdrawn. But, in 1836, the Tithe Commutation Bill, by which a rent-charge upon the land was created in lieu of tithes, was ordered, upon motion:[4] and, in 1864, an objection being taken that the Church Rates Commutation Bill, which created a charge upon real property in lieu of church rates, ought to have been founded upon the resolution of a committee, it was overruled.[5]

Bills for reduction of taxes.

A bill for diminishing or repealing any tax or public charge, is brought in upon motion,[6] unless it be proposed to substitute any other tax or charge; or unless the bill also relate to trade, or to customs which are held to concern trade.

[1] 105 Com. J. 54.

[2] 14 Geo. III. c. 88; 3 Geo. IV. c. 119. Newfoundland Bill, 1832; 87 Com. J. 386. Canada Government Bill, 1840; 95 Ib. 380. 385. Australian Colonies Government Bills, 1849 and 1850; 104 Ib. 424; 105 Ib. 54.

[3] Parl. Paper, No. 86, of 1883.

[4] 91 Com. J. 17.

[5] 174 Hans. Deb. 3rd Ser. 1701.

[6] Repeal of stamp duty on admission to corporations, and repeal of 4½ per cent. duties, 1838. Repeal of duty on bricks, 1839. Penny Postage Bill, 1840. Stamp Duty on Policies of Insurance, 2nd July 1844. Paper Duties Bill, 1860.

A second bill brought in, on the same resolutions.

If a bill which has originated in committee be afterwards withdrawn, and another bill ordered, it is not necessary to resort to a second committee, unless it be proposed to make further charges not previously sanctioned: but the resolutions, or some of them, on which the first bill was founded, are read, and another bill is ordered.[1]

Capital punishments.

A resolution of 1771, "That no bill, or clause in any bill, do pass this house, by which capital punishment is to be inflicted, unless the same shall have been referred to a committee of the whole house," was not made a Standing Order;[2] and appears to have fallen into oblivion with the harsh policy which it was designed to check.[3]

Other bills originating in committee.

These are the only classes of bills which are required, by any order or usage, to originate in a committee: but in some other cases, it has been deemed advisable, for particular reasons, to initiate legislation by preliminary discussion in committee, as in 1856, on the subject of education,[4] and in 1858, on the government of India.[5] Again, in 1867, it was proposed to found the Representation of the People Bill upon resolutions to be previously discussed in committee: but ultimately the bill was brought in without any preliminary proceedings.[6] As the house may refer any matters whatever to the consideration of a committee, this course is not inconsistent with any Parliamentary principle: but it is open to these objections,—that it involves a double discussion of the same questions in committee, and that it reverses the accustomed order of proceeding, by giving precedence to the consideration of the details of a measure, instead of to the principle. It has, however, been deemed inadmissible for a minister who had brought in a bill, which was then standing for a second reading, to propose resolutions in a committee,

[1] 111 Com. J. 126; 112 Ib. 185.

[2] 33 Ib. 417.

[3] On the 21st March 1861, in committee on the Mutiny Bill, Mr. Hennessy called attention to this resolution; but the chairman ruled that it had fallen into desuetude. 162 Hans. Deb. 3rd Ser. 201.

[4] 111 Com. J. 87.

[5] 149 Hans. Deb. 3rd Ser. 853. 1654.

[6] 185 Ib. 214. 1203.

having the same legislative objects, until the order for the second reading of the bill had been discharged.[1]

When preliminary committees may sit.

Where a preliminary vote is to be taken in a committee, for imposing duties or granting money, the committee is appointed for a future day: but where it relates to religion or trade, or any other matter, the house will immediately resolve itself into a committee, for the purpose of agreeing to the introduction of a bill.

Preparing bills.

In preparing bills, care must be taken that they do not contain provisions not authorized by the order of leave, that their titles correspond with the order of leave,[2] and that they are prepared pursuant to the order of leave,[3] and in proper form; for, if it should appear, during the progress of a bill, that these rules have not been observed, the house will order it to be withdrawn.[4] A clause, for instance, relating to the qualification of members, was held to be unauthorized in a bill for regulating the expenses at elections.[5] Such objections, however, should be taken before the second reading; for it has not been the practice to order bills to be withdrawn, after they are committed, on account of any irregularity which can be cured while the bill is in committee,[6] or on recommitment.[7] But in the case of the Income Tax and Inhabited House Duties Bill, 1871, objection having been taken after the report, and the re-commitment of the bill, that the bill comprised provisions relating to the inhabited house duty, which were beyond the order of leave, and that the second reading had been agreed to, under a misapprehension of its contents, the government at once consented to withdraw the bill.[8] All dates, and the amount of salaries, tolls, rates, or other charges were formerly required to be left blank: but the

Blanks or italics.

[1] 149 Hans. Deb. 3rd Ser. 1595.

[2] 102 Com. J. 832; 103 Ib. 522.

[3] Poor Removal and Settlement (Ireland) Bill, 25th April 1883; Votes, p. 342.

[4] 80 Com. J. 329; 82 Ib. 325. 339; 84 Ib. 261; 92 Ib. 254.

[5] 90 Ib. 411.

[6] 71 Hans. Deb. 3rd Ser. 403. MS. Precedent Book.

[7] Clerk of Petty Sessions (Ireland) Bill, 1858.

[8] Hans. Deb. 9th and 11th May 1871.

more convenient practice of printing such matters in italics is now adopted. Technically the words so printed are still known as blanks, and are not a part of the bill until agreed to by the committee, though by a Standing Order of the 19th of July 1854, the former practice of expressly inserting them in committee has been discontinued.[1] Where any charge is proposed to be voted in a committee, after the second reading, the clause must also be printed in italics.

Bills presented.

A bill may be presented on the same day, and during the same sitting, as that in which it is ordered. Some other votes are generally allowed to be passed before it is offered: but, of late years, this practice has not been insisted upon, where it is more convenient, or otherwise desirable, to present the bill immediately. It is presented by one of the members who were ordered to prepare and bring it in.[2] A member who is about to present a bill, should take his draft to the Public Bill Office, where it will be prepared in a proper form for presentation: and, when he has it ready, he should watch his opportunity for presenting it. By an order of the 10th December 1692, it is desired "that every member presenting any bill (or petition) to this house, do go from his place down to the bar of the house, and bring the same up from thence to the table;"[3] and in accordance with this rule, the member appears at the bar, and the Speaker calls upon him by name. He answers, "A bill, sir;" and the Speaker desires him to "bring it up;" upon which he carries it to the table, and delivers it to the clerk of the house, who reads the short title aloud; when the bill is said to have been "received by the house."[4] After a bill has been received in either house, a question is put, "That this bill be now read the first time," which is rarely objected to, either in the Lords or Commons;[5] and in the Commons can only be

First reading and printing.

[1] See *infra*, p. 562.

[2] 33 Com. J. 255. If any other member presents it, it is entered as being done "by order."

[3] 10 Com. J. 740.

[4] See 1 Com. J. 223.

[5] Lords' S. O. No. 33. 17 Com. J. 9; 88 Ib. 614; 136 Ib. 100. (Bill read a first time on division.)

opposed by a division. By Standing Order, 25th June 1852, it is ordered,

"That when any bill shall be presented by a member in pursuance of an order of this house, or shall be brought from the Lords, the questions, 'That this bill be *now* read a first time;' and 'That this bill be printed,' shall be decided without amendment or debate."

It is to be observed that when the question for the first reading of a bill is negatived, the house merely determines that the bill shall not *now* be read; and the question may therefore be repeated on a future day, as in the case of the County Elections Bill, 1852, where it was twice negatived.[1] After the first vote of the house, the bill was no longer among the orders of the day: but notice was given, and a motion made, to read the bill a first time.[2]

How bills are read.

So soon as the house has ordered a bill to be now read a first (second, or third) time, its short title, as entered in the orders of the day, and endorsed on the bill, is read, or supposed to be read, by the clerk, which is taken to be a sufficient compliance with the order of the house. On the 14th May 1868, a motion being made that a bill be read by the clerk at the table, the Speaker explained that this was an exploded practice, and the motion was withdrawn.[3]

Breviates of bills.

It was formerly the practice for the clerk, on the first reading, to read to the house, first, the title, and then the bill itself; after which the Speaker read the title, and opened to the house the effect and substance of the bill, either from memory or by reading his breviate, which was filed to the bill;[4] and sometimes he even read the bill itself.[5] So tedious a practice is rendered unnecessary by the circulation of printed copies of the bill; and the analysis of the several clauses, which is often prefixed to the bill, supplies the place of the ancient breviate. The practice of affixing a breviate or brief to every bill, prevailed during the greater part of the 17th

[1] 107 Com. J. 174. 201.

[2] Votes, 7th May 1852.

[3] Established Church (Ireland) Bill; 191 Hans. Deb. 3rd Ser. 322.

[4] 1 Com. J. 380. 456.

[5] Order and course of passing bills in Parliament, 4to. 1641. 1 Com. J. 298.

century;[1] and at present a member bringing in a bill may prepare a memorandum explanatory of the contents and objects of the bill, but containing nothing of an argumentative character, which, when revised in the Public Bill Office, will be printed and circulated with the bill.[2]

Second reading appointed.

When the bill has been read a first time, the question next put in the Commons, is, "That this bill be read a second time." The second reading, however, is not taken at that time: but a future day is named, on which the bill is ordered to be read a second time. The bill is then ordered to be printed, in order that its contents may be published and distributed to every member before the second reading. Unreasonable delay ought not to be allowed in the printing of a bill after its introduction;[3] and if the bill has not been printed when it is called on for second reading, its postponement is generally insisted upon.[4] Although there is no rule forbidding the second reading of an unprinted bill, the house will not allow it except on rare and special occasions.[5] Every public bill is printed, except ordinary supply bills, which merely embody the votes of the committees of supply and ways and means. But by resolution, 24th March 1863, a sufficient number of the appropriation and indemnity bills are ready for delivery, at the Vote Office, before the committee.[6] In the Lords, the questions for the printing and second reading of a bill on a future day are rarely put: but are entered in the minutes, upon an intimation from the peer who has charge of the bill. After a bill has been presented, and read a first time, it is not regular to make any other than clerical alterations in it.[7] On the 28th March 1873, notice being taken that the University Tests (Dublin) Bill had been materially altered since the first reading, in order

[1] 1 Com. J. 347; 6 Ib. 570.

[2] Mr. Speaker's order, March 1882. 260 Hans. Deb. 3rd Ser. 423.

[3] Speaker's ruling, 22nd May 1873; 216 Hans. Deb. 3rd Ser. 276; and again, 235 Ib. 1429; 240 Ib. 859.

[4] 239 Ib. 609.

[5] Ib.; 256 Ib. 776. Borough Franchise (Ireland) Bill, 7th March 1883, &c.

[6] 118 Hans. Deb. 3rd Ser. 134.

[7] 108 Ib. 969.

to meet objections raised in a debate upon another bill, the Speaker ruled that after the first reading, a bill was no longer the property of the member himself, but passed into the possession of the house; and that no substantial alteration could be made without the distinct order of the house. The order for the second reading was accordingly discharged, and the bill withdrawn; and leave being given to present another bill, instead thereof, another bill was at once presented.[1] The same course was adopted in the case of the Hypothec (Scotland) Bill, in 1878,[2] and the Public Works Loans Bill, in 1879.[3] There is no rule or custom which restrains the introduction of two or more bills relating to the same subject, and containing similar provisions.[4]

Bills withdrawn, and other bills presented.

It frequently happens, that before the second reading of a bill, it becomes necessary to make considerable changes in its provisions, which can only be accomplished, at this stage, by discharging the order for the second reading, and withdrawing the bill. The ordinary practice has been to order a bill to be withdrawn, and to give leave to bring in another bill. And this course is always necessary, if there be any change of title: but where the bill is withdrawn, for the purpose of making numerous amendments, without any change of title, a simpler form of proceeding has occasionally been adopted. So soon as the first bill has been withdrawn, the order of leave for bringing in the bill is read, and "leave is given to *present* another bill, instead thereof" upon the same order of leave. This was done in 1814;[5] and the practice has since been revived, with much convenience.[6] A bill has been withdrawn, and another bill ordered, after

[1] 215 Hans. Deb. 3rd Ser. 303. 305.

[2] 237 Ib. 362.

[3] 246 Ib. 1119.

[4] 268 Hans. Deb. 1656. Borough Franchise (Ireland) Bill, 1883. Criminal Law Bills, 1883, &c.

[5] 69 Com. J. 369.

[6] Fisheries (Ireland) Bill, 1853; 108 Com. J. 612. Poor Law Amendment Bill, and Lunatic Asylums (Ireland) Bill, 1856. Universities (Scotland) Bill, 15th May 1862. 111 Ib. 211. 213; 117 Ib. 202; 132 Ib. 84. 243, &c.

reading the resolution upon which the first bill was founded.[1] It is an old parliamentary rule that a bill brought from the other house should not be withdrawn; and this rule is still observed in the Lords: but, of late years, it has been occasionally departed from in the Commons. When the bill is not withdrawn, the motion for reading it a second time is withdrawn, and the bill is thus dropped; but this is a less convenient course than the withdrawal of the bill itself. Nor is there any obvious objection to the latter, in the case of a bill brought from the other house, for it is no less in possession of the house, at the time, than if it had originated there.

By a Standing Order of the House of Lords, it is ordered,

Second reading.

"That the name of the lord who moves the second reading of any public bill shall be entered on the Journals of this house."

"That the name of the lord presenting a public bill to this house, and of the lord who shall give notice to the clerk assistant that he intends to move the second reading of any public bill brought up from the Commons, shall be printed in the minutes of proceedings of this house in connexion with the same."[2]

Bills for regulation of trade (Lords).

And by another Standing Order, no bill for the regulation of any trade is to be read a second time until a select committee has reported upon the expediency of proceeding with it;[3] and where this stage has been omitted, the order for the second reading has been discharged, and the committee appointed.[4]

Second reading moved.

The day having been appointed for the second reading, the bill stands in the order book, amongst the other orders of the day, and is called on in its proper turn, when that day arrives. If the bill has not yet been printed, the postponement of the second reading, as already stated, is rarely resisted: but when the house has already ordered a bill to be *now* read

[1] 131 Com. J. 128.

[2] Lords' S. O. No. 33.

[3] Coalwhippers (Port of London) Bills, 1851 and 1857; 83 Lords' J. 463; 89 Ib. 192.

[4] Coal Trade Bill, 1836; 68 Ib. 836.

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a second time, the execution of that order cannot be arrested by requiring the clerk to read the whole bill, the reading of the title being now the only form recognized by usage.[1] This is regarded as the most important stage through which the bill is required to pass; for its whole principle is then at issue, and is affirmed or denied by a vote of the house; and it is not regular to discuss, in detail, its several clauses.[2] The member who has charge of the bill[3] moves, "That the bill be now read a second time;" and may take this opportunity of enforcing its merits. Sometimes, however, it is agreed to defer the discussion of the principle until a later stage of the bill. As the house has already ordered that the bill shall be read a second time, and the second reading stands as an order of the day, the motion for now reading the bill a second time need not be seconded, and the same rule applies to other similar stages. The opponents of the bill may simply vote against this question, and so defeat the second reading on *that* day:[4] but this course is rarely adopted, because it still remains to be decided on what other day it shall be read a second time, or whether it shall be read at all; and the bill, therefore, is still before the house, and may afterwards be proceeded with.[5] But when the question for now reading a bill a second time has been negatived, it may be immediately followed by an order for reading the bill a second time that day three or six months.[6] The

[1] Mr. Pope Hennessy's objection, 23rd March 1865; 178 Hans. Deb. 3rd Ser. 181. Established Church (Ireland) Bill, 1868; 192 Ib. 322.

[2] 223 Ib. 33; 237 Ib. 1593.

[3] In his absence a motion has sometimes been made, without notice, to discharge the order for the second reading; but such a practice has been strongly discountenanced from the chair: 22nd May 1873; 216 Hans. Deb. 3rd Ser. 276. An amendment to the same effect, to a formal question for the postponement of a bill, has been discouraged no less distinctly: 4th June 1875; 224 Ib. 1236; and again, 240 Ib. 1675.

[4] 88 Com. J. 399; 97 Ib. 354; 99 Ib. 486; 105 Ib. 672; 114 Ib. 243; Church-rates Redemption Bill, 6th May 1863; Judgments Law Amendment Bill, 13th May 1863; 118 Ib. 206. 221, 222; University Education (Ireland) Bill, 11th March 1873.

[5] Parliamentary Electors Bill; 102 Ib. 822. 837. 872. 901.

[6] 106 Ib. 139; 107 Ib. 267; 110 Ib. 199.

Amendments to question for second reading.

ordinary practice, however, is to move an amendment to the question, by leaving out the word "now," and adding "three months,"[1] "six months," or any other term beyond the probable duration of the session. The postponement of a bill, in this manner, is regarded as the most courteous method of dismissing the bill from any further consideration, and is resorted to, not only on the second reading, but at subsequent stages. Another reason for using this form of amendment is, that the house has already ordered that the bill shall be read a second time; and the amendment, instead of reversing that order, merely appoints a more distant day for the second reading. The same form of amendment is adopted, when it is desired to postpone the second reading for any shorter time.

Amendments in the form of resolutions.

It is also competent to a member who desires to place on record any special reasons for not agreeing to the second reading, or other subsequent stage of a bill, to move, as an amendment to the question, a resolution declaratory of some principle adverse to, or differing from, the principles, policy, or provisions of the bill;[2] or expressing opinions as to any circumstances connected with its introduction, or prosecution;[3] or otherwise opposed to its progress;[4] or seeking further informa-

[1] On the 12th March 1852, the second readings of three Parliamentary Reform Bills were put off for three months, which period, reckoned by lunar months, had elapsed on the 4th June, when they appeared amongst the orders of the day.

[2] Corn Importation Bill, 1842; 97 Com. J. 113. Property Tax Bill, 1842; 97 Ib. 321. Factories Bill, 1844; 99 Ib. 265. Bank Charter Bill, 1844; Ib. 396. Sugar Duties Bill, 1844; Ib. 421. Poor Law Amendment Bill, 1844; Ib. 468. Joint Stock Banks Bill, 1844; Ib. 530. Lunatics Bill, 1845; 100 Ib. 721. Representation of the People Bill, 1859; 114 Ib. 125. In this case the Speaker stated that in the time of his predecessor, between 40 and 50 such resolutions had been moved as amendments to stages of bills; 153 Hans. Deb. 3rd Ser. 1006. Army Discipline Bill, 1879; 134 Com. J. 141. Arrears of Rent (Ireland) Bill, 1882; 137 Ib. 220. 337, &c.

[3] Ecclesiastical Titles Bill, 1851; 103 Com. J. 114. Inhabited House Duty Bill, 1851; 106 Ib. 321. Conspiracy to Murder Bill, 1858; 113 Ib. 65. Paper Duty Repeal Bill, third reading, 8th May 1860 (Sir S. Northcote), 115 Ib. 229.

[4] Corrupt Practices Bill, 1848; 80 Lords' J. 819. Lower Canada Government Bill, 1839; 94 Com. J. 431. Ecclesiastical Duties and Revenues Bill, 1840; 95 Ib. 469. Arms (Ireland) Bill, 1843; 98 Ib. 473. Bishoprick of Manchester Bill, 1847; 102 Ib. 864. Australian Colo-

tion in relation to the bill by committees,[1] commissioners,[2] the production of papers or other evidence,[3] or, in the Lords, the opinions of the judges.[4] Every such resolution, however, like other amendments upon orders of the day, must "strictly relate to the bill which the house, by its order, has resolved upon considering."[5] Thus, in 1873, a resolution proposed to be moved upon the second reading of the Roads and Bridges (Scotland) Bill, that the house declines to entertain *any legislation* involving the compulsory imposition of local burthens, &c., &c., was held to affect other bills as well as that under consideration, and was therefore revised so as to apply to that particular bill only.[6] When such a resolution amounts to no more than a direct negation of the principle of the bill, it is an objectionable form of amendment;[7] but there are special cases for which it may be well adapted. On the 21st February 1854, an amendment was made to the question for reading the Manchester Education Bill a second time, that "education to be supported by public rates, is a subject which ought not, at the present time, to be dealt with by any *private* bill," which gave legitimate expression to the opinion of the house.

Effect of such a resolution.

It must be borne in mind, however, that the resolution, if agreed to, does not formally arrest the progress of the bill, the second reading of which may be moved on another

nies Government Bill, 1850; 105 Ib. 334. Government of India Bill, 23rd June 1853; 108 Ib. 609. Representation of the People Bill, 1866 (Lord Grosvenor's amendment on second reading); 121 Ib. 213. Elementary Education Bill, 1876; 131 Ib. 262. Valuation of Property Bill, 1877; 132 Ib. 86. Customs and Inland Revenue Bill, 1878; 133 Ib. 182, &c.

[1] 82 Lords' J. 284; 83 Ib. 201; 85 Ib. 279; 88 Ib. 337; 65 Ib. 209 (Stafford Bribery Bill). In this case a select committee was appointed to inquire into the allegations of the preamble. 95 Com. J. 476; 98 Ib. 354. 398. 552; 99 Ib. 31; 104 Ib. 384; 105 Ib. 139; 110 Ib. 238.

[2] 95 Ib. 469 (Amendment for an Address); 100 Ib. 719.

[3] 88 Lords' J. 543; 102 Com. J. 865; 106 Ib. 382; 107 Ib. 186; 137 Ib. 77.

[4] Bank Charter Bill, 1833; 65 Lords' J. 613.

[5] Report on Public and Private Business, 1837 (No. 517), p. 5; 143 Hans. Deb. 3rd Ser. 643; 269 Ib. 961.

[6] 11th June 1873.

[7] Jewish Disabilities Bill, 1848; 103 Com. J. 414.

occasion. The effect of such an amendment is merely to supersede the question for *now* reading the bill a second time; and the bill is left in the same position as if the question for now reading the bill a second time had been simply negatived,[1] or superseded by the previous question. The house refuses, on that particular day, to read the bill a second time, and gives its reasons for such refusal; but the bill is not otherwise disposed of.[2] Such being the technical effect of a resolution, so carried, it need scarcely be said that its moral and political results vary according to the character and importance of the resolution itself, the support it has received, and the means there may be of meeting it, in the further progress of the bill. Thus the amendment to the second reading of the Conspiracy to Murder Bill, in 1858, being also a vote of censure, was not only fatal to that measure, but caused the immediate fall of Lord Palmerston's ministry. Again, the amendment to the second reading of the Reform Bill of 1859, was decisive as to that measure, and led to a dissolution. So, on the 22nd July 1872, a resolution being carried, on the Thames Embankment (Land) Bill, that having regard to the advanced period of the session and the pressure of more important business, it was not expedient to proceed further with the consideration of the bill, the bill was necessarily abandoned. But where the resolution merely relates to some provision of the bill, it does not arrest its progress, provided the principle affirmed can be accepted, or successfully resisted at a further stage. Thus, on the 6th May 1872, on going into committee upon the Education (Scotland) Bill, a resolution was carried, affirming that instruction in the holy scriptures was an essential part of education, and ought to be provided for in the bill. To give effect to this

[1] 244 Hans. Deb. 3rd Ser. 1384.

[2] In 1861, the second reading of the Marriage Law Amendment Bill having been superseded by a resolution, the Speaker, on being appealed to by its mover, suggested that the best course would be to withdraw the bill and introduce another, in harmony with the expressed opinion of the house. 162 Hans. Deb. 3rd Ser. 892.

resolution it was necessary to move an amendment in committee, of which Mr. Gordon, the mover of the resolution, gave notice. This amendment was negatived; and the resolution of the house was thus practically reversed. As it is a well-known and unquestioned rule that "in every stage of a bill, every part of the bill is open to amendment, whether the same amendment has been, in a former stage, accepted or rejected,"[1] and as the committee are entitled to form an independent judgment upon every amendment proposed, this proceeding was in strict conformity with parliamentary usage; and the decision of the committee was again open to review by the house itself, upon the consideration of the bill as amended. Where the objection to a bill is of a more limited and peculiar character, it may be more conveniently reserved as an instruction to the committee, at a later stage, or for amendments in committee.[2] When a resolution was about to be moved, anticipating discussion upon various provisions of the bill, which were the subjects of amendments in committee, the Speaker pointed out the irregularity of such a proceeding, and the motion was not made.[3] In the Lords, resolutions relating to a bill have been moved separately, before the order of the day, and not by way of amendment,[4] —a course which would be incompatible with the rules of the other house. No amendment can be moved on the second reading or other stage of a bill, by way of addition to the question.[5]

Previous question.

Sometimes the previous question is moved on the second reading[6] and other stages of bills:[7] but it is not so appropriate as other proceedings in more common use. It is also open to the same objection as a simple negative of the second

[1] 2 Hatsell, 135.
[2] See *infra*, pp. 552, 561.
[3] 192 Hans. Deb. 3rd Ser. 1571.
[4] Supreme Court of Judicature Bill (Lord Redesdale), 2nd May 1873.
[5] See *supra*, p. 321.
[6] 113 Com. J. 220; 116 Ib. 103. 135. 137. County Franchise Bill, 1864, and Borough Franchise Bill, 1864 and 1865; 119 Com. J. 160. 234; 120 Ib. 247.
[7] 8 Ib. 421; 10 Ib. 762; 13 Ib. 292; 26 Ib. 270. 592; 30 Ib. 418; 99 Ib. 504; and see *supra*, p. 304.

reading, as the bill is not disposed of, but may be appointed to be read on another day.

Bills dropped. It may here be stated, that if no motion be made for the second reading or other stage of a bill, or for its postponement, it is allowed to drop, and does not appear again upon the order book, unless another day be appointed for its consideration. Sometimes a bill has been read a second time by mistake or inadvertence; when the proceedings have been declared null and void, and another day has been appointed for the second reading.[1]

Bills rejected. Instances of rejecting bills altogether were formerly not uncommon, but are now comparatively rare; two cases only appearing in the Journals of the Commons for upwards of half a century:[2] but in the Lords the practice has been more general.[3] In more ancient times bills were treated with even greater ignominy.[4] On the 23rd January, in the 5th Elizabeth, a bill was rejected and ordered to be torn:[5] so, also, on the 17th March 1620, Sir Edward Coke moved "to have the bill torn in the house;" and it is entered, that the bill was accordingly "rejected and torn, without one negative."[6] And even so late as the 3rd June 1772, the Lords having amended a money clause in the Corn Bill, Governor Pownall moved that the bill be rejected, which motion being seconded, the Speaker said, "that he would do his part of the business, and toss the bill over the table." The bill was rejected, and the Speaker, according to his promise, threw it over the table, "several members on both sides of the question kicking it as they went out."[7]

There is no restriction in regard to the time at which

[1] Masters and Operatives Bill, 1859; 114 Com. J. 139; 153 Hans. Deb. 816.

[2] 37 Com. J. 444; 80 Ib. 425. On the 8th Oct. 1831, a motion was made to reject the Reform Bill, but was withdrawn; 1 Molesworth, Hist. 165.

[3] See Gen. Indexes to Lords' J., tit. "Bills."

[4] 1 Com. J. 252. 262. 311.

[5] Ib. 63.

[6] Ib. 560.

[7] 17 Parl. Hist. 512–515.

motions for rejecting bills may be made: but, if the house think fit, such rejection may be voted on the first, second, or third readings, or any other stage of the bill. It has been thought better, however, to notice the practice in this place, in connexion with the postponement of bills, in order to save repetition, when the other stages are under consideration.

Counsel ordered.

The second reading is the stage at which counsel have usually been heard, whenever the house has been of opinion that a public bill was of so peculiar a character, as to justify the hearing of parties whose interests, as distinct from the general interests of the country, were directly affected by it.[1] It is a general principle of legislation, that a public bill, being of national interest, should be debated in Parliament upon the grounds of public expediency; and that the arguments on either side should be restricted to members of the house, while peculiar interests are represented by the petitions of the parties concerned. Questions of public policy can only be discussed by members: but where protection is sought for the rights and interests of public bodies, or others, it has not been unusual to permit the parties to represent their claims by counsel. Counsel have also been heard at various other stages of bills, as well as on the second reading.[2] In the case of bills of pains and penalties, disabilities, or disfranchisement, it has been usual to order a copy of the bill, and the order for the second reading, to be served upon the parties affected, and to hear them by counsel.[3] The

[1] Cotton Factories Bill, 1818; 51 Lords' J. 662; 88 Com. J. 501; 90 Ib. 587, &c. Municipal Corporations Bill (Lords), 1833. Warwick Borough Bill (Lords), 1834. Stafford Disfranchisement Bill (Lords), 1836. Canada Government Bill (Commons), 1838, Mr. Roebuck. Jamaica Bill (Commons), 22nd and 23rd April, and 7th June 1839; and (Lords), 28th June. Ecclesiastical Duties and Revenues Bill (Lords), 1840. Sudbury Disfranchisement Bill (Lords), 1842 and 1844. For further explanations of the principle upon which Parliament has permitted counsel to be heard against public bills and precedents cited, see Lords' Debate on Australian Colonies Bill, 10th June 1850; 111 Hans. Deb. 3rd Ser. 943.

[2] See Com. Gen. Journ. Indexes, tit. "Counsel."

[3] Wilson's Disabilities Bill, 1737. Rumbold's Pains and Penalties Bill,

attorney-general has also been ordered to appoint counsel to manage the evidence, at the bar of the house, in support of the bill,[1] or to take care that evidence be produced in support of the bill.[2]

Commitment of bills.

When a bill has been read a second time, a question is put, "that this bill be committed," which is rarely opposed,[3] being a mere formal sequel to the second reading,—not admitting of any discussion of the merits of the bill itself. When this question has been agreed to, a day is named for the committee. On the order of the day being read for the committee, it is moved in the Lords, that the house be now put into committee on the bill; to which an amendment may be moved, that the house be put into committee on a future day, beyond the probable duration of the session. When the order of the day is read in the Commons, for the house to resolve itself into a committee on the bill, the Speaker puts a question, "That I do now leave the chair," to which the proper amendment is, to leave out from the word "that," to the end of the question, in order to add, "this house will on this day 'three months,' or 'six months,' resolve itself into the said committee." If attention were not paid to this form of amendment, the absurdity might arise of ordering Mr. Speaker to "leave the chair this day six months." It is not competent to move any amendment by way of addition to the question, that Mr. Speaker do now leave the chair.[4] Nor, in debating that question, is it permissible to discuss the several clauses, or proposed amendments, in detail.[5]

Instructions to committees on bills.

But before the house resolves itself into committee, an instruction may be given to the committee, empowering them to make provision for any matters not relevant to the

1782. Queen's Degradation Bill, 1820 (Lords); and see Chap. XXII. on ELECTIONS.

[1] Rumbold's Bill, 7th May 1782.

[2] O'Sullivan's Disabilities Bill, 5th May 1869; 124 Com. J. 180.

[3] Lords' S. O. No. 33.

[4] Mr. Speaker Denison's Note-Book, 28th May 1866; and see *supra*, p. 321.

[5] 18th March 1875; 223 Hans. Deb. 3rd Ser. 35. See also 224 Ib. 1297; 225 Ib. 684. 1683; 232 Ib. 1196; 236 Ib. 396.

subject-matter of the bill.[1] According to the rules and general practice of Parliament, an instruction does not *order* a committee to make any provision: but merely instructs them "that they have power" to make it.[2] In the Lords, indeed, mandatory or imperative instructions are occasionally given concerning the provisions of bills.[3] And in the Commons such instructions were formerly not without recognition.[4] But, according to modern practice, mandatory instructions are now confined to proceedings unconnected with the provisions of bills.[5] If the proposed provision be relevant, it cannot be the subject of an instruction, which would be nugatory, as the committee would already have the power which it is the object of the instruction to confer.[6] The following examples will serve to illustrate the conditions under which instructions are necessary, in order to enable committees to introduce provisions which would otherwise exceed a fair interpretation of the rule concerning relevant amendments.

[1] It has been ruled that notice of an instruction should be given; 176 Hans. Deb. 3rd Ser. 1940.

[2] On the 13th July 1803, Mr. Pitt moved an instruction to the committee on the Income Duty Bill, "that it do make provision for the like abatements, &c." "I stated my doubts to the house upon the regularity of such an instruction, as being unnecessary. That the purpose of an instruction was to give a *power* to a committee to do that which it could not do without that power. Whereas, with a view to the present object of making *abatements*, the committee were competent already so to do. Also, I stated that no instruction was in itself obligatory. The latter point Mr. Addington afterwards illustrated by pointing out that even the committee could not act upon the instruction, without a question put upon the thing to be done, which of itself implied that the instruction was not conclusive upon the committee." 1 Lord Colchester's Diary, 431. See also 2 Lord Sidmouth's Life, 144. The instruction was negatived by 150 to 50; 58 Com. J. 606; 36 Parl. Hist. 1668. See also 189 Hans. Deb. 3rd Ser. 1070.

[3] 65 Lords' J. 551; 68 Ib. 151; 83 Ib. 443.

[4] 6 Hans. Deb. 3rd Ser. 268, 269; 21 Com. J. 836; 30 Ib. 832. Starch Duties Bill, 55 Ib. 42; 57 Ib. 418. 647; 65 Ib. 282; 66 Ib. 299. Representation of the People Bill, 1831; 86 Ib. 759. Municipal Corporations Bill, 14th July 1835; 90 Ib. 451.

[5] 13 Ib. 466. 759; 16 Ib. 426. 493. 604; 17 Ib. 292. 296; 46 Ib. 170. 269; 48 Ib. 635; 49 Ib. 360.

[6] 195 Hans. Deb. 3rd Ser. 847; 207 Ib. 402.

Examples of instructions.

On the 13th June 1855, it was ruled (privately) by the Speaker, that without an instruction it would not be competent to the committee on the Sunday Trading (Metropolis) Bill to extend its provisions to the United Kingdom: such a proposal being more properly indeed the subject of a new bill:[1] but bills with a general title, if its provisions apply to England and Scotland only, may be extended to Ireland, without an instruction.[2] Again, on the 20th March 1862, it was ruled that an instruction was required to enable the committee on the Markets and Fairs (Ireland) Bill, to provide for the equalisation of weights and measures on all mercantile transactions in Ireland.[3] On the 10th March 1859, a clause to repeal the provisions of the 5 Geo. I. c. 4, prohibiting any mayor from resorting to any public meeting for religious worship, other than of the Church of England, with the ensigns of office, was held not to be relevant to a bill to amend the law relating to municipal elections.[4] On the 10th May 1865, an instruction was deemed necessary to enable the committee on a bill for the registration of county voters, to extend certain provisions relating to the duties and powers of revising barristers, to cities and boroughs;[5] and on the 11th May 1865, it was ruled that an instruction was needed to entitle the committee on the Union Chargeability Bill, which regulated the charges upon parishes within existing unions, to make provision for altering the boundaries of unions, which had been the subject of a distinct act.[6] In 1860, and again in 1866, an instruction was given to the committee on the Representation of the People Bill, that they have power to make provision for restraining bribery and corrupt practices.[7] And in 1867, an instruction was given to

[1] MS. Minute.

[2] Settled Estates Drainage Bill, 4th June 1840; Copyhold Bill, 20th May 1841. In 1851, an instruction was given to the committee on the bill to continue the property tax, empowering them to amend the Act 5 & 6 Vict. c. 35, by which the tax had been granted.

[3] 165 Hans. Deb. 3rd Ser. 1876.

[4] MS. Minute.

[5] 179 Hans. Deb. 3rd Ser. 98.

[6] Ib. 116.

[7] 158 Ib. 1966; 183 Ib. 1320.

the committee on the Representation of the People Bill, after full consideration, to enable them to alter the law of rating, as it was intended by several amendments to alter that law, not merely in reference to registration and the rights of voting, which would have been relevant, but in respect of the incidence of taxation and the rights and interests of owners and occupiers, then governed by general and local acts, irrespectively of the franchise.[1] On the 30th June 1873, an instruction was held to be necessary to enable the committee on the bill for the constitution of a supreme court, and the better administration of justice, in England, to provide for the hearing of appeals from Scotland and Ireland. On the 21st June 1877, it was held necessary to instruct the committee on the Sale of Intoxicating Liquors on Sunday (Ireland) Bill, that they have power to make provision for the supervision by the police of refreshment houses on all days of the week, and for increased penalties on keeping for sale by retail intoxicating liquors, without a licence.[2] On the 24th March 1879, in committee on the Poor Law Amendment Bill, which was confined to the English law, it was held that amendments for amending and repealing the Scotch law, could not be entertained without an instruction.[3] Again, on the 4th August 1879, in committee on the Game Laws Amendment (Scotland) Bill, it was ruled that the operation of the bill could not be extended to England without a previous instruction from the house.[4]

An instruction cannot be given to make any provision, if it be of such a nature that it ought to have been considered in a committee of the whole house, as imposing a charge upon the people,[5] or concerning religion or trade;[6] for otherwise the rules of the house would be evaded.

[1] 186 Hans. Deb. 3rd Ser. 1270.

[2] 132 Com. J. 288.

[3] 244 Hans. Deb. 3rd Ser. 1600.

[4] 249 Ib. 175.

[5] In 1875, the Education (Scotland) (Sutherland and Caithness) Bill, hav-

[6] See *supra*, p. 527 *et seq.* On the 18th June 1862, an instruction to the committee on the Sale of Spirits Bill, having been held to concern trade, was withdrawn. 167 Hans. Deb. 3rd Ser. 699.

On the 4th June 1860, notice had been given of no less than nine instructions to the committee on the Representation of the People Bill, which served to illustrate most of the rules and principles applicable to such proceedings. Some were held to be inadmissible, as the committee had already power to make the required provision; some as being mandatory in form; two, on the ground that, as they related to religion, a preliminary committee was necessary; and one as referring to the United Kingdom, in anticipation of two other bills for amending the representation of Scotland and Ireland, already appointed for consideration. An amendment to a proposed instruction was also overruled, as referring to a matter within the competence of the committee, and also as being mandatory.[1]

When and how to be moved.

The most proper and convenient time for moving an instruction is, after the order of the day for the committee on the bill has been read, and before any question has been proposed thereon: when it should be proposed as a distinct motion. Instructions have sometimes been moved in the form of an amendment to the question for the Speaker leaving the chair:[2] but this course is inconvenient; for if the amendment be agreed to, it supersedes the main question, and thus prevents the Speaker from leaving the chair, which is not the object of the amendment, nor the desire of its mover. Hence where notice has been given of moving an instruction to the committee on a bill, and also of an amendment to the question for the Speaker to leave the chair,

ing been founded upon a resolution of the house, authorising the application of public money, notice was given, for the 15th June, of two instructions to the committee on the bill. The first proposed to extend the bill to the whole of Scotland, which, being ruled (privately) to be irregular, was not moved. The second proposed a similar extension, so far only as concerned the audit of accounts; and as this did not concern public money, it was allowed to be moved. Votes and Notices for 15th June 1875.

[1] 158 Hans. Deb. 3rd Ser. 1951–1988.

[2] 75 Com. J. 435; 76 Ib. 137, 138; 78 Ib. 107; 80 Ib. 111; 88 Ib. 163; 113 Ib. 207.

precedence is given to the former.[1] Any number of instructions may be moved in succession, to the committee on the same bill; as each question for an instruction is separate, and independent of every other. Amendments may also be moved to a question for an instruction:[2] provided the amendment be so framed that if agreed to, the question, as amended, would retain the form of an instruction, and its matter be such as may properly form the subject of an instruction. On the 28th May 1866, notice having been given of a motion to refer the Representation of the People Bill and the Redistribution of Seats Bill to the same committee, and of an instruction to empower the committee to consolidate those bills into one, another notice was given of an amendment to the proposed instruction, in the form of a resolution condemning the principles and provisions of the latter bill. It was, however, ruled (privately) that no such amendment could be moved to the instruction. A doubt was, indeed, raised whether the amendment could not be moved to the prior question for referring the two bills to the same committee: but, after much consideration, it was held that this motion was also in the nature of an instruction, and that the two motions, though forming the subject of two questions, were substantially one instruction. The first referred the two bills to the committee; the second empowered the committee to consolidate them. And it was admitted that great inconvenience would arise if resolutions, which could not be otherwise interposed between the reading of the order of the day, and the question founded upon it, were allowed under cover of an amendment to an instruction. This view was acquiesced in by all parties, and arrangements were accordingly made by which the amendment was moved to the question for the Speaker leaving the chair.[3]

Resolutions

A distinct resolution is sometimes moved as an amendment

[1] 149 Hans. Deb. 3rd Ser. 1406. Union Chargeability Bill, 11th May 1865; 179 Hans. Deb. 3rd Ser. 116.

[2] 101 Com. J. 813.

[3] Private mem. 183 Hans. Deb. 3rd Ser. 1347.

in the nature of instructions.

to the question for the Speaker leaving the chair, which, if agreed to, may have the same ultimate effect as an instruction, by declaring the opinion of the house, to which effect can afterwards be given in proper form.[1] Such a resolution may thus be moved, when an instruction would be irregular;[2] for if it comprise matters which, by the rules of the house, must be first considered in a committee, effect is afterwards given to the resolution, by a vote in committee, and by founding upon it, if necessary, an instruction to the committee on the bill. The form of an instruction is such as to preclude the house from complying with these preliminary formalities, as it takes immediate effect, and it would therefore be irregular, under such circumstances, to move it. In the same manner, in cases where an instruction would be irregular, the objects contemplated by it being within the general powers of the committee, a resolution may be moved, embodying the opinion of the house.

Before first sitting of committee.

All such motions, however, whether in the form of instructions or of amendments, should be made before the first sitting of the committee; for by a Standing Order, 25th June 1852, if the bill have already been partly considered, the Speaker will forthwith leave the chair when the order for the committee has been read; and there is consequently no opportunity for offering such a motion. An instruction cannot be moved as a distinct notice, apart from the order of the day for the committee on a bill, unless it be founded on the report of a committee of the whole house, in which case the proceeding is necessarily separated from the order of the day.[3] But, otherwise, irregular discussions would be raised upon

[1] Warwick Borough Bill, 5th March 1834; 89 Com. J. 91. Established Church Bill, 8th July 1836; 91 Ib. 639. Poor Relief (Ireland) Bill, 9th May 1837; 92 Ib. 358. Freemen's Admission Bill, 10th May 1837; 92 Ib. 364. Colleges (Ireland) Bill, 23rd June 1845; 100 Ib. 621. Election Recognizances Bill, 15th March 1848; 103 Ib. 330. Representation of the People Bill, 1867 (Captain Hayter), 186 Hans. Deb. 3rd Ser. 1278.

[2] Sugar Duties Bill, 14th March 1845 (Mr. Hawes). Church Rates Abolition Bill, 21st April 1858 (Mr. Puller).

[3] 105 Com. J. 635.

bills appointed for consideration at other times. By Standing Order, 19th July 1854:

Several bills may be referred to one committee;

"Bills which may be fixed for consideration in committee on the same day, whether in progress or otherwise, may be referred together to a committee of the whole house, which may consider on the same day all the bills so referred to it, without the chairman leaving the chair on each separate bill; provided that, with respect to any bill not in progress, if any member shall object to its consideration in committee with other bills, the order of the day for the committee on such bill shall be postponed."

and consolidated into one bill.

This course is now frequently adopted, with much convenience and saving of time.[1] Two or more bills may also be referred to the same committee, with an instruction to the committee that they have power to consolidate them into one bill.[2]

Instructions to hear counsel.

Sometimes also, petitions have been referred to the committee on a bill, with an instruction that they have power to hear counsel and examine witnesses.[3]

Bill considered in committee.

If the house agree to the question for the Speaker leaving

[1] 114 Ib. 253; 124 Ib. 63. In some cases after an amendment, proposed but not made, to the question that the Speaker do now leave the chair, other orders of the day for committees on bills have been read, and the bills committed to the same committee, before the Speaker was ordered to leave the chair. 19th June, 17th July 1846; 101 Com. J. 276. 353.

[2] Representation of the People and Redistribution of Seats Bill, 28th May 1866; 183 Hans. Deb. 3rd Ser. 1319. For other precedents of such instructions, see 19 Com. J. 522; 20 Ib. 143; 21 Ib. 832. 836; 22 Ib. 162; 30 Ib. 164. 832; 58 Ib. 568; 106 Ib. 365; 124 Ib. 246; 125 Ib. 246, &c.

[3] Corn Regulation Bill, 1791; 46 Com. J. 466. Sinecure Offices Bill, 1812; 67 Ib. 309. Weymouth Borough Bill, 1813; 68 Ib. 362. Apprentices Bill, 1814; 69 Ib. 335. Penryn Bribery Bill, 1819; 74 Ib. 441. Silk Trade Bill, 1824; 79 Ib. 180. Coventry Magistracy Bill, 1827; 82 Ib. 536. East Retford Disfranchisement Bill, 1828; 83 Ib. 122. Liverpool Franchise Bill, 1832. Municipal Corporations Bill, 1835; 67 Lords' J. 329. Municipal Corporations (Ireland) Bill, 1839; 71 Ib. 259; 87 Ib. 461. Limitation of Actions (Ireland) Bill, 1843; 98 Ib. 538. Gaming Actions Discontinuance Bill, 1844; 76 Ib. 550. 553. St. Albans Disfranchisement Bill, 1851; 84 Ib. 101. See also debate on Colonel Wilson Patten's motion for hearing the electors of Lancaster before the committee on the Representation of the People Bill, 1867; 186 Hans. Deb. 3rd Ser. 982.

the chair, the mace is removed from the table, and the committee begin the consideration of the bill. As its principle has been affirmed at the second reading, the details of the bill are to be examined in committee, clause by clause, and line by line, and every blank (if any) filled up;[1] for which purpose the permission to speak more than once offers great facilities.

Proceedings in committee.

In the Lords the first proceeding of the committee is to postpone the title, which is there treated as a part of the bill: but in the Commons the committee do not consider the title, unless it requires amendment. The preamble is next postponed, which, in the Commons, is the first proceeding.[2] By Standing Order, 27th November 1882:—

Postponement of preamble.

"It is provided that in committee on a bill, the preamble do stand postponed until after the consideration of the clauses, without question put."

This practice is adopted because the house has already affirmed the principle of the bill, on the second reading, and it is therefore the province of the committee to settle the clauses first; and then to consider the preamble in reference to the clauses only. By this rule the preamble is made subordinate to the clauses, instead of governing them. It was not observed, however, in the Bishoprick of Manchester Bill, 1847,[3] nor in the Education (Scotland) Bill, 1855,[4] in which cases the question for postponing the preamble was put and negatived; and the preamble considered before the clauses. The same course was proposed in the Ecclesiastical Titles Bill, 1851, but was not adopted by the committee.[5] Upon the question for postponing the preamble, a discussion was sometimes raised upon the principle of the bill,[6] but this incon-

[1] See *infra*, p. 562.

[2] The preliminary questions for reading the bill a first and second time were discontinued by Standing Order, 19th July 1854.

[3] 102 Com. J. 911. 932.

[4] 110 Ib. 289.

[5] 106 Ib. 231.

[6] 186 Hans. Deb. 3rd Ser. 1383; Parliamentary and Municipal Elections Bill, 1871; Regimental Exchanges Bill, 15th March 1875; and see chairman's ruling, 27th May 1876, &c.

venient practice has now been discontinued by the recent Standing Order. On the 29th June 1869, in committee on the Irish Church Bill, in the House of Lords, a long debate was raised upon the postponement of the preamble, which was, however, agreed to without a division.[1]

Amendments, when to be offered.

The chairman then proceeds to read the number of each clause in succession, which is thus brought under the consideration of the committee. A member is not at liberty to speak generally upon a clause, upon its being called by the chairman, there being no question before the committee until an amendment has been moved, or a question put that the clause stand part of the bill.[2] If no amendment be offered to any part of a clause, the chairman at once puts the question, "That this clause stand part of the bill," and proceeds to the next: but when an amendment is proposed, he states the line in which the alteration is to be made, and puts the question in the ordinary form. Members who are desirous of offering amendments in committee should watch carefully the progress of the bill, and propose them at the proper time; for if the committee have passed on to another clause, or even amended a later line or words in the same clause, amendments cannot be made in an earlier part of the bill. Whenever several amendments are about to be moved to the same clause, the chairman proposes each of them in such a form as not to exclude any later amendments; and with this view he often proposes only the first words of an earlier amendment.[3] No amendment can properly be proposed to a clause which is irrelevant to the subject-matter of such clause: but it should be submitted to the committee, at the end of the bill, as a separate clause.[4] Neither may an amendment be proposed to

[1] 197 Hans. Deb. 3rd Ser. 689.

[2] Representation of the People Bill, 18th June 1866 (Chancellor of the Exchequer); 84 Hans. Deb. 3rd Ser. 536.

[3] 181 Hans. Deb. 3rd Ser. 539; 184 Ib. 445.

[4] Divorce and Matrimonial Causes Bill, 6th Aug. 1857; 147 Hans. Deb. 3rd Ser. 1190. 1198. Manor Courts (Ireland) Bill, 23rd Feb. 1859 (MS. Minute). Prisons' Bill, 1st and 22nd March 1878; 232 Ib. 1242; 233 Ib. 359. Army Discipline Bill, 19th June 1879; 247 Ib. 278.

leave out from the word "That" to the end of the clause, in order to substitute other words,—such an amendment being in the nature of a new clause.[1] In such a case the regular course is to negative the question, that the clause stand part of the bill, and to bring up a new clause, at the proper time. But when an amendment has already been made at the beginning of a clause, and it is afterwards proposed to leave out the remainder of the clause, such an amendment has been held to be regular.[2] When a clause has been amended, the question put from the chair is, "That this clause, as amended, stand part of the bill;" and no other amendment can be proposed to a clause, after this question has been proposed from the chair.[3] It has been ruled that when the question, "That this clause stand part of the bill," has been put from the chair, it cannot be withdrawn, as it necessarily follows upon the consideration of the clause, and is not a motion made by any member which he could ask leave to withdraw.[4] By Standing Order, 19th July 1854,

Proceedings upon blanks.

"In going through a bill, no question shall be put for the filling up of words already printed in italics, and commonly called 'blanks,' unless exception be taken thereto; and if no alterations have been made in the words so printed in italics, the bill is to be reported without amendments, unless other amendments have been made thereto."

Where, for any reason, real blanks have been left, according to the former practice, if it be desired to fill them up with words different from those first proposed, a distinct motion is made upon each proposal, instead of moving an amendment upon that first suggested. The chairman puts the question upon each motion separately, and in the order in which they were made.[5] It was formerly an occasional, but not the constant, practice to put first the motion for a smaller sum or longer time:[6] but according to later practice, this

[1] 116 Hans. Deb. 3rd Ser. 666; 196 Ib. 74; 200 Ib. 1057, &c.

[2] Irish Land Bill, 1st April 1870; 200 Hans. Deb. 3rd Ser. 1057.

[3] 147 Ib. 1191.

[4] Hypothec Abolition (Scotland) Bill, 1st April 1879.

[5] 93 Com. J. 526; 94 Ib. 465. 497.

[6] 88 Ib. 617.

rule has not been observed in committees upon bills. Thus, on the 18th July 1856, in committee on the Vice-President of the Committee of Council on Education Bill, it was proposed to fill up the blank, for the salary of the office, with 2,000*l.*: it was afterwards proposed to fill it up with 1,200*l.*; and the question was put and decided upon the sum first proposed.[1] Where the proposed sum has already been printed in italics, and another sum is proposed, the latter is put in the form of an amendment, without reference to the relative amount of the two proposals;[2] and this practice is now uniformly observed.

Money clauses.

When bills are introduced with clauses which involve charges upon the public revenue, whether payable out of the Consolidated Fund, or out of monies to be provided by Parliament,[3] or whether by way of direct payment or guarantee,[4] or impose any tax or state burthen upon the people, such clauses are printed in italics, and cannot be agreed to by the committee on the bill unless such charges or taxes have previously been reported by a committee, and agreed to by the house, either before or after the introduction of the bill.[5] Where it appeared that certain payments directed to be made would be discharged out of civil contingencies, a preliminary committee was held to be necessary.[6] Clauses involving local taxation only are not printed in italics, nor previously voted in committee.[7]

Drawbacks.

In 1857, the sugar duties had been voted in the committee of Ways and Means: the bill granted a drawback upon sugar imported into the Isle of Man, which had not been voted; and it was ruled (privately) that such a drawback might properly be enacted in the bill.[8]

[1] 111 Com. J. 363.
[2] 110 Ib. 223; 111 Ib. 353.
[3] Amended Standing Order, 20th March 1866.
[4] Main Drainage of the Metropolis Bill, 1858. Canada Railway Loan, 1867.
[5] 242 Hans. Deb. 3rd Ser. 196.
[6] St. Albans Inquiry Commission Bill, 1851.
[7] 179 Hans. Deb. 3rd Ser. 481.
[8] MS. Precedents.

Duties not to be increased by committee on the bill.

If a schedule of duties has been reported from a committee, and agreed to by the house, the committee on the bill cannot increase such duties, nor add any articles not previously voted;[1] but if the duties so voted are less than those payable under the existing law, it is competent for the committee on the bill to increase them, provided such increase be not in excess of the existing duties.[2] Any duty, voted in a preliminary committee, may be reduced by the committee on the bill.

Repeal of exemptions from duty.

But where exemptions from duty are repealed, and the duty therefore increased, a preliminary committee is necessary, before the committee on the bill can agree to such a provision.[3] A clause or amendment will not be received, granting costs against the Crown, or revenue officers, and thereby imposing a public charge, unless authorized by preliminary proceedings.[4]

Land revenues.

It appears that the land revenues of the Crown may be applied to improvements of Crown property, without a preliminary vote, although by statute such land revenues are carried to the Consolidated Fund.[5]

Remission of advances.

Prior to 1875, it had been held, that where advances have been made by the Treasury, under statutes, and it has been proposed to remit the repayment of them, no previous vote in a committee of the whole house was necessary.[6] But such advances having been made recoverable by 39 Vict. c. 89, s. 3,

[1] MS. Precedents, 20th March 1846.

[2] Ib. 26th March 1846; and see Chap. XXI. on SUPPLY.

[3] Stamp Duties Bill, 1854; 109 Com. J. 334. This question was raised 30th April 1863, on the Customs and Inland Revenue Bill; but it affected the construction of a preliminary resolution granting a renewal of the property tax, and not the principle of this rule, which was not controverted.

[4] 12th May 1862, Sir H. Willoughby's proviso in Customs and Inland Revenue Bill; 166 Hans. Deb. 3rd Ser. 1593.

[5] Newborough Church Bill, 1 Will. IV. c. 59. Hainault Forest Bill, 1851. Pimlico Improvement Bill, 1852. Sunk Island Roads Bill, 1852. Whychwood Forest Bill, 1853.

[6] Consolidated Annuities (Ireland), 18th July 1853. Portumna Bridge Bill, 1858. Leith Harbour and Docks Bill, 1860. Holyhead Roads Bill, 1861. Irish Church Bill, 1869 (Maynooth).

as specialty debts due to the Crown, it has since been held that bills for the remission of advances are to originate in committee.[1]

What amendments admissible.

Amendments may be made in every part of the bill, whether in the preamble, the clauses, or the schedules; clauses may be omitted, and new clauses and schedules added. In the Lords, new clauses are brought up and inserted in their proper places, while the committee are going through the bill:[2] but in the Commons, all the clauses of the bill are considered before any new clauses are brought up and added to the bill. In committee on the Mutiny Bill in 1867, an exceptional course was adopted for the sake of convenience, and certain clauses were postponed until after the consideration of a new clause relating to flogging in the army.[3] An amendment or new clause cannot be brought up, if substantially the same as one already negatived by the committee.[4] An amendment must be coherent and consistent with the context of the bill. A proposed amendment having been so amended as to form an incoherent question, the chairman stated that if no further amendment were proposed, he should proceed with the question which next arose upon the clause.[5]

New clauses and schedules.

There appears to have been considerable diversity of practice, at different periods, in the method of dealing with new clauses, and with the schedules to a bill. Sometimes the schedules were considered immediately after the original clauses of the bill, and then new clauses were brought up;[6] and, on other occasions, new clauses were offered immediately after the original clauses of the bill were disposed of; and this latter course is the latest and most approved form of

[1] Public Loans (Ireland) Remission Bill, 1881.

[2] 88 Lords' J. 234. Representation of the People Bill, 30th July 1867; Lords' Minutes, pp. 1277. 1279.

[3] 122 Com. J. 141. 149; 186 Hans. Deb. 3rd Ser. 768. 912.

[4] 211 Ib. 137. 2026.

[5] Prisons Bill, 1877; 132 Com. J. 73.

[6] Poor Law Amendment Bill, 18th July 1844; Turnpike Trusts (South Wales) Bill, 24th July 1844; 99 Com. J. 517. 536.

procedure.[1] It is, in nearly all cases, most convenient to consider every clause of the bill before the schedules, which are merely supplementary to the bill. But if, in any particular instance, there should be some special reason for taking the schedules before the new clauses, that course might be adopted. The new clauses proposed by the minister, or other member in charge of the bill, are proposed before other new clauses.[2]

Where there are several schedules to a bill, they are treated in the same manner as clauses. They are taken *seriatim;* and it is not until they have all been considered that new schedules can be offered. If one schedule be disagreed to, another cannot be offered to supply its place, until the remaining schedules have been disposed of. A new schedule is brought up, read a first time and second time, amended, if need be, and added to the bill.[3]

In the Commons, all amendments were formerly required to be within the scope and title of the bill; but by Standing Order, 19th July 1854,

Special report if title amended.

"Any amendment may be made to a clause provided the same be relevant to the subject-matter of the bill, or pursuant to any instruction, and be otherwise in conformity with the rules and orders of the house: but if any amendment shall not be within the title of the bill, the committee are to amend the title accordingly, and report the same specially to the house."[4]

No amendment should be admitted which is in the nature of a previous question.[5] If it be convenient, clauses may be postponed, unless they have been already partly considered and amended, in which case it is not regular to postpone them.[6] But if a proposed amendment be withdrawn,

[1] Parliamentary Representation Bill, June 1867, &c.

[2] 208 Hans. Deb. 3rd Ser. 802.

[3] Metropolitan Buildings Bill, 17th July 1844; 99 Com. J. 512. Parl. Rep. Bill, 1867; 122 Ib. 365; 188 Hans. Deb. 3rd Ser. 1280.

[4] Rules and Orders, No. 362.

[5] But see proceedings in committee on Reform Bill, 1832; 87 Com. J. 133. 141. 165. 173,—questions and amendments concerning Amersham, Helston, Gateshead and South Shields.

[6] 207 Hans. Deb. 3rd Ser. 722. Elections (Parliamentary) Bill, 25th July 1871.

the clause may be postponed.[1] Upon a question for the postponement of a clause, the debate is limited to the simple question of postponement, and may not be extended to the merits of the bill.[2] Postponed clauses are considered after the other clauses of the bill have been disposed of, and before any new clauses are brought up. But they have also been considered, under special circumstances, after new clauses,[3] or certain other clauses,[4] or some of the schedules of the bill.[5] If any new clause be offered, the chairman desires the member to bring it up, and it is read a first time without any question being put.[6] A question is then put for reading the clause a second time, and if agreed to, the clause may be amended, before the question is put for adding it to the bill. The committee may divide one clause into two, or decide that the first part of a clause, or the first part of a clause with a schedule, shall be considered as an entire clause.[7] A new clause, however, will not be entertained if inconsistent with other clauses already agreed to by the committee,[8] or if substantially the same as another clause previously negatived.[9] When instructions have been given by the house for that purpose,[10] the committee may receive clauses or make provision in the bills committed to them, which they could not otherwise have considered.[11] If a clause or amendment irrelevant to the subject-matter of the bill be offered, the chairman will decline to put the question.[12] On the 30th July 1874, it was ruled, in committee on the Expiring Laws Continuance Bill, that it was not within the scope of the committee to amend the provisions of the acts proposed to be continued, or to abridge the duration of such provisions.[13]

[1] Supreme Court of Judicature Bill, 8th July 1873; 128 Com. J. 340.

[2] 207 Hans. Deb. 3rd Ser. 1378.

[3] 132 Com. J. 235.

[4] 136 Ib. 267.

[5] Supreme Court of Judicature Bill, 1875; 130 Ib. 425.

[6] Standing Order, 19th July 1854.

[7] 86 Com. J. 728; 87 Ib. 80; 89 Ib. 409; 132 Ib. 235.

[8] Municipal Elections Bill, 1859; 114 Ib. 103.

[9] 179 Hans. Deb. 3rd Ser. 538.

[10] See *supra*, p. 552—558.

[11] 179 Hans. Deb. 3rd Ser. 522.

[12] 111 Com. J. 213.

[13] 129 Ib. 353.

In compliance with instructions, also, the committee may consolidate two bills into one, or divide one bill into two or more;[1] or examine witnesses and hear counsel.[2] When all the clauses and schedules have been agreed to, and any new clauses or schedules added, the preamble, which had been postponed, is considered, and, if necessary, is amended so as to conform to amendments made in the bill;[3] and the chairman puts the question, "That this be the preamble of the bill," which he reads (short) to the committee. Lastly, in the Lords, the title of the bill is considered and agreed to; and in the Commons, when any amendment is to be made to the title, this is the last proceeding of the committee.[4] Sometimes the short title of the bill is also amended in committee.[5] When two bills are to be consolidated, the preambles of the two bills are severally postponed, and the clauses of each are successively proceeded with. When a bill is to be divided into one or more bills, it is usual to postpone those clauses which are to form a separate bill, and when they are afterwards considered, to annex to them a preamble, enacting words and title. The separate bills are then separately reported.[6]

Bills committed *pro formâ*.

When the lord, or member, having charge of a bill desires to introduce numerous amendments, in order to meet the views of other members, or otherwise to improve the measure, and render it more generally acceptable to the house, he may express his desire that the bill shall be committed *pro formâ*, —a course which is rarely objected to. In such cases the proposed amendments are not separately considered; nor is any question put upon the several clauses of the bill. The

[1] 73 Lords' J. 188; 85 Ib. 294. 107 Com. J. 140. 223; 108 Ib. 645; 116 Ib. 376 (three bills); 124 Ib. 194; 126 Ib. 121; 127 Ib. 230, &c.

[2] See *supra*, p. 559.

[3] 99 Com. J. 48. 154; 100 Ib. 135; 104 Ib. 505.

[4] 110 Ib. 223; 111 Ib. 276; 112 Ib. 373.

[5] 135 Ib. 360. 398.

[6] Newspaper Stamps Bill, 1836. Inland Revenue Bill, 1861, divided into three bills; 116 Ib. 385. Trades Unions' Bill, 1871; 126 Ib. 121; 205 Hans. Deb. 3rd Ser. 977.

proceeding being entirely formal, all discussion is avoided, and the chairman reports the bill, with the amendments, to the house; and it is reprinted in its amended form, and re-committed for a future day. Lords' bills are so treated, like other bills.[1] It is not, however, regular to commence the consideration of a bill in the usual way, and to deal with the remaining clauses *pro formâ:* but it has been arranged that all subsequent amendments, though put from the chair, shall be accepted without discussion.[2] When a bill has been committed *pro formâ*, it is not regular to introduce, without full explanation, amendments of so extensive a character as virtually to constitute it a different bill from that which has been read a second time by the house, and committed. In 1856, the Partnership Amendment Bill having been committed *pro formâ*, it was extensively amended: but no amendment was inserted which it was not clearly competent for the committee to entertain; yet, when an objection was urged that it had become a new bill, the minister in charge of it, while denying the alleged extent of the amendments, consented to withdraw the bill.[3] When the amendments affect the principle of the bill, the more regular and convenient course is to withdraw the bill, and present another.[4] When a bill, having been committed *pro formâ*, is re-committed, it is afterwards considered, like any other bill, committed for the first time, and not, as is sometimes erroneously supposed, like a bill in progress. A question is put for Mr. Speaker leaving the chair, and amendments may be moved to it, in the usual way.

Proceedings of committee not known until reported.

The house is not supposed to be informed of any of the proceedings of the committee until the bill has been reported; and any discussion of the clauses, with the Speaker in the chair, is consequently irregular. For this reason, on a motion for postponing the further sitting of the committee on the

[1] English Church Services in Wales Bill, 20th April 1863; Naval and Victualling Stores Bill, 27th June 1864; Merchant Shipping Bill, 5th August 1867; Contagious Diseases (Animals) Bill, 4th July 1867.

[2] Literary and Scientific Societies Bill, 4th June 1856.

[3] 140 Hans. Deb. 3rd Ser. 2200.

[4] See *supra*, p. 539.

Scotch Poor Law Bill, on the 17th July 1845, on the ground of certain alterations which had been made in committee, Mr. Speaker stopped the discussion of the merits of those alterations.

Report of progress.

If the committee cannot go through the whole bill at one sitting in the Lords, the chairman puts a question that the house be resumed, which being agreed to, he leaves the chair, and moves that the house be put into committee on a future day; and in the Commons, the committee direct the chairman to report progress, and ask leave to sit again. Sometimes, where several bills have been referred to the same committee, a report is made that they had not made any progress in certain bills.[1]

Report of the bill.

When the bill has been fully considered, the chairman puts a question, "That I do report this bill without amendment," or, "with the amendments, to the house;" which being agreed to, the chairman leaves the chair without any further question,[2] and Mr. Speaker resumes his chair; upon which the chairman approaches the steps of the Speaker's chair, and reports from the committee that "they had gone through the bill, and had made amendments," or "several amendments thereunto." If no amendments have been made, he reports "that they had gone through the bill, and directed him to report the same, without amendment."

When committee make no report.

Sometimes, however, the proceedings of a committee on a bill are brought abruptly to a close, by an order "that the chairman do now leave the chair;"[3] in which case the chairman, being without instructions from the committee, makes no report to the house. A bill disposed of, in this manner, disappears from the order book, and is generally regarded as defunct;[4] but as the house cannot be bound by the deci-

[1] 124 Com. J. 268.

[2] S. O. 27th November 1882.

[3] 90 Com. J. 497. 562; 105 Ib. 345: 111 Ib. 201; 112 Ib. 310; 126 Ib. 339, &c.

[4] "No committee can destroy a bill, but they can lay it down." More's Notes of Debates in the Long Parliament, 14th April 1641; Harl. MSS. See also Mr. Speaker's ruling; 176 Hans. Deb. 3rd Ser. 99.

sion of a committee, and has not itself agreed to any vote by which the bill has been postponed for the session, it is competent for the house to appoint another day for the committee, and to proceed with the bill.[1] When the committee on a bill is so revived, its proceedings are resumed at the point at which they were interrupted,—having been valid, and duly recorded in the minutes, until the chairman was directed to leave the chair.[2]

So also, if notice be taken, or if it appear, upon a division, that forty members are not present, the chairman, being without instructions, makes no report to the house. The house, however, in such cases, has constantly appointed other days for the committee. On the 6th August 1855, a novel course was adopted, scarcely consistent with the usage of the house, in regard to public bills. The committee on the Crime and Outrage (Ireland) Bill, having been counted out, was *revived*, and ordered to sit and proceed to-morrow.[3]

Proceedings on report.

In the Lords, the bill is at once reported if there be no amendments: but there is a Standing Order, 28th June 1715, which declares "that no report be received from any committee of the whole house, the same day such committee goes through the bill, when any amendments are made to such bill."[4] In the absence of the chairman of committees, leave has been given to another peer to report the amendments.[5] On the 2nd April 1868, it was resolved, that in entering in the Journals the reports of bills amended in committees of the whole house, the only name entered therewith shall be

[1] Paupers Removal Bill, 1815; 70 Com. J. 384. 410. 455. General Turnpike Bill, 1827; 82 Ib. 365. 399. 410. Savings Banks and Friendly Societies Bill, 1860; 115 Ib. 402. 427. Court of Chancery (Ireland) Bill, 21st and 22nd June 1864, and Mr. Speaker's decisive ruling on the latter day, 176 Hans. Deb. 3rd Ser. 99. It was also ruled, according to precedent, that no notice was necessary of the revival of the committee. Joint Stock Companies (Voting Papers) Bill, 22nd and 23rd June 1864.

[2] Savings Banks and Friendly Societies Bill, 31st July 1860: MS. Committee Minute-Book.

[3] 110 Com. J. 449.

[4] Lords' S. O. No. 35.

[5] 91 Lords' J. 33.

that of the lord who moves the reception of the report, and takes charge of the bill in that stage.[1]

By Standing Order of the Commons, 25th June 1852,

"At the close of the proceedings of a committee of the whole house on a bill, the chairman shall report the bill forthwith to the house, and when amendments shall have been made thereto, the same shall be received without debate, and a time appointed for taking the same into consideration."

When the report has been received, if no amendments have been made, the bill is ordered to be read a third time on a future day. If amendments have been made by the committee, the report is a formal proceeding, and the bill as amended is ordered to be taken into consideration on a future day. If the title has been amended, such amendment is specially reported.[2] In the Lords, no bill may be read a third time on the same day on which it is reported from the committee, unless the Standing Orders be suspended for that purpose:[3] but in the Commons, bills reported from a committee, without amendments, are frequently read a third time on the same day, especially at the end of a session.[4]

Bills reprinted.

At this stage it is customary to reprint the bill, if several amendments have been made; for no verbal explanation of numerous amendments can possibly make the amended bill intelligible; and the practice of both houses is to rely more upon a reprint of the bill, than upon any proceedings in the house, on the report of very numerous or important amendments. A bill, as amended in committee, cannot be ordered to be printed until it has been reported to the house: but occasionally, while a bill has been in progress, the amended clauses, so far as they have been agreed to, have been printed, by direction of the Speaker, and circulated with the votes.[5]

By Standing Order 27th November 1882,

Consideration of bill, as amended.

"When the order of the day for the consideration of a bill, as

[1] 100 Lords' J. 103.
[2] 115 Com. J. 343; 120 Ib. 95, &c.
[3] Lords' S. O. No. 35.
[4] 97 Com. J. 480. 482; 107 Ib. 335; 113 Ib. 352; 133 Ib. 344, &c.
[5] Representation of the People Bill,

amended in the committee of the whole house, has been read, the house do proceed to consider the same without question put, unless the member in charge thereof shall desire to postpone its consideration, or a motion shall be made to recommit the bill."

Clauses added, and amendments made.

When the bill, as amended by the committee, is considered, the entire bill is open to consideration, and new clauses may be added, and amendments made, whether they be within the scope and title, or even relevant to the subject-matter of the bill, or not.[1] The vicious practice of adding provisions to bills, quite foreign to their object, which was formerly not uncommon, is now very rarely tolerated: but the house has not imposed any formal restraint upon its own discretion, in admitting whatever amendments it may think proper, though not within the title, which may be afterwards amended, on the third reading.[2] The house may exercise, directly, the same power which it sometimes grants to committees, by way of instruction. Thus, on the 11th July 1853, on the third reading of a Stamp Duties Bill, an amendment was made, providing that drafts on bankers payable to order should be sufficient authority for payment, without proof of endorsement.[3]

No clause may be offered at this stage, unless notice has been given;[4] and it has been held that such notice must comprise the words of the clause intended to be proposed; and where a clause has been offered, differing materially from the notice, it has not been entertained.[5] Nor can this defect of notice be supplied by an amendment being proposed to the clause by another member; as the clause cannot be amended until it has been received and read a second

1867; 187 Hans. Deb. 3rd Ser. 1863, Irish Church Bill, 1869; Irish Land Bill, 1870; Land Law (Ireland) Bill, 1881.

[1] 99 Com. J. 63.

[2] 202 Hans. Deb. 3rd Ser. 1386.

[3] 108 Com. J. 671, and MS. Book of Precedents; see also Assessed Taxes Bill, 9th Feb. 1854; 109 Ib. 47.

[4] Standing Order, 19th July 1854.

[5] Oxford University Bill, 26th June 1854; 109 Com. J. 336; 134 Hans. Deb. 3rd Ser. 694; Government of India Bill, 6th July 1858 (Mr. Seymour); 151 Ib. 1036. See also Representation of the People Bill, 1867 (Col. Wilson Patten); 188 Ib. 1452.

time.[1] A member has not been permitted to move a clause, of which another member had given notice.[2] New clauses are first offered; after which amendments may be made to the several clauses of the bill as reported by the committee. When a member offers a clause on the consideration of the bill as amended, the Speaker desires him to bring it up, when it is read a first time, without question put.[3] A question is afterwards proposed, "That it be read a second time;" which is the proper time for opposing the clause. If this question be affirmed, amendments may then be proposed to the clause. Such amendments are offered, as in committee, in the order in which, if agreed to, they will stand in the amended clause: but if a proposed amendment be withdrawn, a prior amendment may be moved.[4] Sometimes the motion for reading the clause a second time, and also the clause itself, are, by leave of the house, withdrawn.[5] The last question put by the Speaker is, "That this clause, or this clause as amended, be added to (or made part of) the bill." The member who offers the clause is entitled to speak on bringing it up (no other debate being allowed), and, again, on the question that it be read a second time. Each amendment proposed to the clause can be discussed according to the usual rules of debate; and lastly, on the question that the clause (whether amended or not) be added, a further debate may arise.[6] But such debate must be confined to the clause itself, and may not be extended to other provisions, or general merits of the bill.[7] Clauses containing rates, penalties, or other blanks, must also pass through a committee before they are added to the bill:[8] but a whole clause, increasing any burden on the people, cannot be added unless the bill is recommitted. An amend-

[1] 134 Hans. Deb. 3rd Ser. 694.

[2] 5th Aug. 1876; 231 Hans. Deb. 3rd Ser. 662.

[3] Standing Order, 19th July 1854.

[4] Elementary Education Bill (14th clause), 4th Aug. 1876.

[5] 112 Com. J. 332. 393, &c.

[6] See 1st June 1863; Mr. Lygon's objection on Report of Inland Revenue Bill; 171 Hans. Deb. 3rd Ser. 188.

[7] 212 Hans. Deb. 3rd Ser. 1277.

[8] 97 Com. J. 424; 119 Ib. 316; 120 Ib. 356.

ment, involving a direct charge upon the public revenue, will not be put from the chair;[1] or if it has been agreed to inadvertently, it will be cancelled.[2] Nor may any amendment be made which increases a tax, or repeals an existing exemption from a tax; but where the committee on the bill have inserted an exemption from a tax, it has been held to be regular to strike it out.[3] Where it has appeared that a proposed amendment would vary the incidence of taxation, the Speaker has declined to put the question.[4] But where a charge has been imposed upon the ratepayers in committee, an amendment to omit the clause has been held to be regular, although its omission left other parties, already liable by law, still chargeable with certain expenses.[5] Where a bill proposed to relieve the Consolidated Fund of a charge of 20,000*l.*, and an amendment was moved to a Lords' amendment, which would have had the effect of reducing the extent of that relief to 18,000*l.*, it was held to be admissible, at that stage.[6] Where an amendment is proposed by leaving out a clause of the bill, a question is put, that such clause "stand part of the bill."[7] No amendments will be allowed which are inconsistent with the provisions of the bill, as already agreed to by the house.[8]

Proceedings of committee reviewed on report.

Upon the consideration of a bill, as amended, the proceedings of the committee are otherwise open to review. Thus, a clause inserted in committee, by mistake, has been struck out;[9] and clauses having been introduced, not relevant to the subject-matter of the bill, the bill has been recommitted in respect of those clauses.[10]

Bills recommitted.

It often becomes necessary to recommit a bill to a committee of the whole house, and occasionally to a select com-

[1] 112 Com. J. 393. 164 Hans. Deb. 3rd Ser. 173; 191 Ib. 1877; 242 Ib. 1302; 270 Ib. 1834.

[2] County Courts Bill, 111 Com. J. 371.

[3] Drainage Bill, 1840.

[4] 123 Com. J. 157; 191 Hans. Deb. 3rd Ser. 1878.

[5] Expenses of hustings, 23rd July 1868; 193 Ib. 1688.

[6] 193 Ib. 1887. 1920.

[7] 113 Com. J. 285. 339.

[8] 258 Hans. Deb. 3rd Ser. 1597. 1628.

[9] 109 Ib. 403.

[10] 119 Ib. 172.

mittee, before it is read a third time; and a recommitment of the bill is always advisable, when numerous amendments are to be proposed.

A bill may be recommitted: 1. Without limitation, in which case the entire bill is again considered in committee, and reported with "other" or "further" amendments. 2. The bill may be recommitted with respect to particular clauses or amendments only,[1] or to the clauses in which amendments are proposed to be made, and the preamble.[2] 3. On clauses or schedules being offered, or intended to be proposed, the bill may be recommitted with respect to these clauses or schedules.[3] In these two latter cases no other parts of the bill are open to consideration.[4] A bill, however, has been recommitted in respect of certain clauses, and of any new clauses relating to the subject-matter of those clauses.[5] 4. The bill may be recommitted, and an instruction given to the committee, that they have power to make some particular or additional provision.[6] If the member who has charge of the bill, and other members also, desire the recommitment of a bill, the former has priority in making the motion for that purpose.[7]

Again recommitted.

A bill may be recommitted as often as the house thinks fit. It is not uncommon for bills to be again recommitted once or twice,[8] and there are cases in which a bill has been six, and even seven times, through a committee of the whole house, in consequence of repeated recommitments.[9] The proceedings on the report of a recommitted bill are similar to those already explained: the report is received at once, and the bill, as amended, is ordered to be taken into consideration

[1] 83 Com. J. 533; 94 Ib. 510; 124 Ib. 282; 126 Ib. 440.

[2] Bank Notes Issue Bill, 1865, &c.; 120 Com. J. 304; 125 Ib. 208. 346.

[3] 92 Ib. 415; 108 Ib. 570; 115 Ib. 293; 116 Ib. 121; 120 Ib. 348; 126 Ib. 289; 127 Ib. 427; 132 Ib. 411.

[4] 179 Hans. Deb. 3rd Ser. 826.

[5] 128 Com. J. 360.

[6] 89 Ib. 127; 107 Ib. 294.

[7] Bank Notes Issue Bill, 25th May 1865.

[8] 77 Lords' J. 325. 83 Com. J. 354; 89 Ib. 286; 93 Ib. 605; 94 Ib. 318.

[9] 65 Ib. 384. 396. 420; 69 Ib. 420. 444. 460.

on a future day. Sometimes, after the house has ordered a bill to be read a third time on a future day, this order is discharged, and the bill recommitted,[1] or ordered to be withdrawn;[2] and with a view to the recommitment of a bill, amendments are occasionally moved to the question for reading a bill a third time, that the order for the third reading be discharged, or that the bill be recommitted.[3]

Committed to Select Committees.

Notwithstanding the facilities for discussion afforded by a committee of the whole house, the details of a bill may often be considered more conveniently by a select committee. Indeed, according to the ancient practice, all ordinary bills were committed to select committees, and none but the most important were reserved for the consideration of a committee of the whole house. Every public bill, however, has, for a long period, been considered in committee of the whole house, whether it was also committed to a select committee or not. Sometimes a bill is referred to the same select committee as other bills already committed:[4] or to committees appointed to inquire into or consider other matters:[5] or two or more bills are referred to the same committee.[6] When it has not been determined, until after the second reading, to commit a bill to a select committee, the order, or order of the day, as the case may be, for the committee of the whole house, is read and discharged, and the bill is committed to a select committee;[7] or, when the question is proposed for the house to resolve itself into committee, or for the Speaker leaving the chair, an amendment may be made by leaving out all the words from "That" to the end of the question, and adding, "the bill be committed to a select

[1] 110 Com. J. 117; 111 Ib. 208; 113 Ib. 318. 339. 384, &c.

[2] 110 Ib. 419; 112 Ib. 380. 392, &c.

[3] 112 Ib. 391; 118 Ib. 167. 274.

[4] 84 Lords' J. 172; 92 Ib. 70. 245; 116 Com. J. 146; 120 Ib. 65; 129 Ib. 151; 133 Ib. 61. 222, &c.

[5] 103 Ib. 929; 105 Ib. 396; 106 Ib. 243; 111 Ib. 59; 114 Ib. 67; 115 Ib. 87.

[6] 119 Ib. 165; 120 Ib. 65.

[7] 72 Lords' J. 355; 110 Com. J. 143; 111 Ib. 207; 112 Ib. 337; 119 Ib. 256.

committee."[1] In the Lords, a bill is sometimes committed to a private committee of the lords present this day.[2] When it is deemed advisable to take evidence, the necessary powers are given to the committee for that purpose.[3] The committee are not entitled to make such amendments as to constitute a new bill.[4]

Title amended by Select Committee.

The order of the house concerning the making of relevant amendments in a bill, without an instruction, and amending a title, is, in terms, confined to committees of the whole house: but as the rules of select committees have generally been made, as far as possible, conformable to those of the house itself, and of committees of the whole house, this amended practice has been followed by select committees,[5] without any exception having been taken to it, and may be considered as authorized by the usage of the house. And this practice has been extended to the insertion of money clauses, pursuant to resolutions of committees of the whole house, without any special instruction.[6]

Bills reported from Select Committees.

When the bill is reported from a select committee, it is recommitted to a committee of the whole house,[7] unless it be first recommitted to the same select committee.[8] If, in addition to reporting the bill, with or without amendments, the committee desire to inform the house of any matters relating to the bill, leave is obtained to make a special report,[9] unless the committee have power to send for persons, papers, and records, in which case it may make a special report, under

[1] 87 Lords' J. 205. 432; 92 Ib. 646; 109 Com. J. 230; 111 Ib. 337; 119 Ib. 99.

[2] 66 Lords' J. 150. 583.

[3] 104 Com. J. 253; 106 Ib. 164.

[4] Toll Bridges (River Thames) Bill, 21 July 1876; 230 Hans. Deb. 3rd Ser. 1679.

[5] Pier and Harbour Orders Confirmation Bill, 1863; 118 Com. J. 248. Government Annuities Bill, 1864; 119 Ib. 255. Municipal Corporations (Borough Funds) Bill, and Wild Fowl Protection Bill, 1872; 127 Ib. 169. 342.

[6] Electric Telegraphs Bill, 1868; 123 Com. J. 350. County Officers and Courts (Ireland) Bill, 1877; 134 Ib. 301. MS. Minutes of Proceedings.

[7] 106 Com. J. 393; 107 Ib. 199.

[8] 97 Ib. 446; 98 Ib. 487; 106 Ib. 239.

[9] 110 Ib. 236; 120 Ib. 386.

the Standing Order of the 9th August 1875. If the select committee should fail to report the bill, the committee may be revived, and the bill recommitted to it.[1]

Objections to a committee of the whole house.

Such had hitherto been the practice in regard to committees on bills: but in 1882, the revival of an ancient procedure was introduced. For several years it had become apparent that new conditions of political life had rendered the consideration of every bill in a committee of the whole house, a serious obstacle to the legislative and deliberative efficiency of the House of Commons. Such a committee affords no relief to the house itself; it is not, indeed, a committee in the proper sense: it is not a selected body to whom certain functions are delegated: but is the entire house of six hundred and fifty members, who are at liberty to move amendments to every line of a bill, and to speak any number of times to each amendment. Meanwhile, all the other important business of the legislature is suspended. Nevertheless, so long as a comparatively small number took part in discussing the details of a bill, a committee so constituted was an effective body. No member was excluded from its deliberations: the utmost publicity was given to its proceedings; and its resolutions were generally accepted by the house. But, of late years, discussions in a committee of the whole house have assumed a more intractable character; and the consideration of two or three important bills may occupy the greater part of a session. For example, in 1879, the committee on the Army Discipline and Regulation Bill held twenty-two sittings: in 1881, the committee on the Irish Land Bill thirty-nine sittings, and the Prevention of Crime (Ireland) Bill thirty-one sittings. For bills of the first importance, a committee of the whole house may be the most fitting tribunal: but for bills of a secondary and less contentious character, the house, in 1882, resolved upon the experiment of standing committees, more representative than a select committee, and

[1] 115 Com. J. 373.

less obstructive to general legislation than a committee of the whole house.

Standing Committees on law and trade.

And by Standing Orders of the 1st December 1882, bills relating to law and courts of justice and legal procedure, and to trade, shipping, and manufactures, may be committed to a standing committee, consisting of not less than sixty nor more than eighty members, nominated by the committee of selection, and otherwise constituted as already described elsewhere.[1]

Bills to Standing Committees.

When it is intended to commit a bill to a standing committee, notice is required to be given; and when the motion is made, a general debate upon the merits or clauses of the bill will not be permitted, the notice being a mere sequel to the second reading, equivalent to the commitment of a bill to a committee of the whole house, or to a select committee, after the second reading, and altogether unlike the subsequent committee stage, when a motion is made for the Speaker to leave the chair.[2]

Proceedings of Standing Committees.

The proceedings of a standing committee are assimilated, as far as possible, to those of a committee of the whole house. The notices of amendments are printed and circulated with the votes. The members address the chair standing; amendments are proposed under the same rules; the minutes of proceedings are printed daily, with the divisions upon every question; and the debates are published in the newspapers.

A bill reported from a standing committee is to be proceeded with as if it had been reported from a committee of the whole house, and need not, therefore, be recommitted; but the Standing Order relating to the consideration of a bill reported by a committee of the whole house is not to apply.[3]

Provisional order bills.

When public bills for confirming provisional orders or certificates of boards or commissions, for the inclosure or drainage

[1] *Supra*, p. 444 (Committees).

[2] Criminal Code (Indictable Offences) Bill, 16th April 1883; Mr. Speaker's rulings.

[3] See *supra*, p. 445.

of land, for the local government of towns, the construction of piers and harbours, the regulation of charities, or other matters, have been opposed by parties locally interested in particular orders, it has been customary to commit such bills, so far as they relate to the place concerned, to a select committee, to be appointed by the committee of selection, in the same manner as in the case of a private bill.[1] The same course has also been adopted in the case of other public bills affecting a particular place.[2]

Discontinuance of ingrossment.

The ancient system of ingrossing all bills upon parchment, after the report, was discontinued in 1849; when both houses agreed to substitute bills, printed on vellum, by the Queen's printer, for the parchment rolls.[3] These arrangements were confined to public bills during the session of 1849; but on the 27th July they were extended, in future sessions, to local, personal and private bills, except as to the printing of such bills by one printer for both houses.[4] By the adoption of this system, the old form of question "that this bill be ingrossed," which always followed after the report, or further consideration of report, was dispensed with.

Third reading.

On the third reading, the judgment of the house is expressed upon the entire bill, as it stands after all the amendments introduced in committee, and at other stages. Every amendment may be proposed to the question for now reading the bill a third time, which has already been described in reference to the second reading. Sometimes the question for the third reading has been negatived: but, as previously stated, such a vote is not fatal to the bill. On the 18th

[1] Inclosure Bill (Chigwell), 5th May 1862; 117 Com. J. 178. Pier and Harbour Bill (Llandudno and Rhyl), 12th May 1863. Land Drainage (Provisional Orders) Bill (Morden Carrs), 28th May 1863. Local Government Supplemental Bill (Matlock Bath), 4th May 1863; 118 Ib. 199. 220. 239. Pier and Harbour Bill, 1864; 119 Ib. 256; 127 Ib. 291; 133 Ib. 204, &c.

[2] Harwich Harbour Bill, 28th May 1863; 118 Com. J. 240. See also *infra*, Chapter XXVI. on PRIVATE BILLS.

[3] 81 Lords' J. 16. 25. 104 Com. J. 51.

[4] 104 Com. J. 578. 620.

April 1853, the question for reading the Combination of Workmen Bill a third time was negatived: but on the 20th, another day was appointed for the third reading; and the bill was subsequently read a third time and passed. In the Lords, new clauses may be added, and amendments made to the bill, at this stage; and the same practice formerly prevailed in the Commons; but by a Standing Order of the 21st July 1856, "no amendments, not being merely verbal, shall be made to any bill on the third reading;" and since that time the only amendments admitted have been strictly within the scope of that order.[1] If material amendments are required to be made, it is usual to discharge the order for the third reading, to recommit the bill, and introduce the amendments in committee. In such cases it has been customary to consider the bill as amended, and to read it a third time, immediately.[2]

Bill passed.

Occasionally, a bill is read a third time, and "further proceedings thereon" are adjourned to a future day:[3] but the general practice is to follow up the third reading with the question, "That this bill do pass." This question has sometimes passed in the negative, after all the preceding stages of the bill have been agreed to:[4] but though debates and divisions, have occasionally taken place at that stage,[5] it is not usual to divide upon it; and of late years the question has gradually fallen into disuse, as formal and superfluous; and if it be put, in the case of a severely contested bill, no amend-

[1] 112 Com. J. 210. 377. 380; 114 Ib. 361; 121 Ib. 183. &c.

[2] New Zealand Government Act Amendment Bill, 7th August 1857; 112 Com. J. 384. Stamp Duties Bill, 31st March 1860; 115 Com. J. 174.

[3] After the third reading of the Queen's Degradation Bill in the House of Lords, 10th Nov. 1820, the further consideration of the bill was put off for six months; 53 Lords' J. 762.

[4] 76 Com. J. 413; 80 Ib. 617; 89 Ib. 497; Tests Abolition (Oxford) Bill, 1864; 119 Ib. 388.

[5] Reform Bill, 1831; 86 Com. J. 860. Ecclesiastical Titles Bill, 1851; 106 Ib. 335. Succession Duty Bill, 1853; 108 Ib. 692. Bribery Bill, 28th July 1854. Education (Scotland) Bill, 12th July 1855; 110 Ib. 372; 117 Ib. 383.

ment is permissible.[1] Sometimes a bill is passed *nemine contradicente*.[2]

Title of the bill.

In the Lords, the original title of a bill is amended at any stage at which amendments are admissible, when alterations in the body of the bill have rendered any change in the title necessary; but in the Commons, the original title is not amended during the progress of the bill, unless the house agree to divide one bill into two, or combine two into one, or the committee have amended the title. The last question to be determined is, "That this be the title of the bill," but this final question is not put by the Speaker, unless it be proposed to amend the title. Amendments may then be offered to the title, which are generally such as render it conformable with amendments which may have been made to the bill since its first introduction.[3] When such amendments are material, the short title by which the bill is distinguished in the Votes is also altered.[4]

Temporary laws.

It may be as well to recall to mind in this place, that the Standing Order of the Commons, 17th November 1797, requiring the duration of a temporary law to be expressed both in the title and in a clause at the end of the bill, was rescinded on the 24th July 1849, when the following Standing Order was substituted:—

"That the precise duration of every temporary law be expressed in a distinct clause at the end of the bill."[5]

By Act 48 Geo. III. c. 106, if a bill be in Parliament for the continuance of any temporary act, and such act expires before the royal assent is given to the bill, the act to be continued does not lapse in the interval.

The bill not to be altered otherwise than by amendment.

Throughout all these stages and proceedings, the bill itself continues in the custody of the clerk, or other officers of the house, and no alteration whatever is permitted to be made in

[1] Mr. Speaker's ruling 28th Feb. 1881; 258 Hans. Deb. 3rd Ser. 1832.

[2] Mr. Speaker's Retirement Bill, 1857; 112 Com. J. 110.

[3] 104 Com. J. 581; 105 Ib. 338; 117 Ib. 378.

[4] 109 Ib. 316; 111 Ib. 309; 112 Ib. 384; 116 Ib. 373. 392; 135 Ib. 48. 323.

[5] 104 Ib. 558.

it, without the express authority of the house or a committee, in the form of an amendment regularly put from the chair, and recorded by the clerk at the table, or by the chairman in committee.[1]

Communicated from Lords to Commons.

The next step is to communicate the bill to the other house. It has been already stated elsewhere that the Lords ordinarily send their bills to the Commons by the clerk of the Parliaments, or a clerk at the table.[2] When the bill has originated in the Lords, "a message is ordered to be sent to the House of Commons to carry down the said bill, and desire their concurrence." If the bill has been sent up from the Commons, and has been agreed to without amendment, the Lords send a message "to acquaint them, that the Lords have agreed to the said bill without any amendment," but do not return the bill: but if they have made amendments, they return the bill with a message, "that the Lords have agreed to the same with some amendments, to which their lordships desire their concurrence."[3]

From Commons to Lords.

The Commons send up their bills to the Lords by their clerk, or by one of the clerks at the table, who delivers it at the bar, to one of the clerks at the table of that house. The form of message adopted by the Commons in sending bills to the upper house is similar, *mutatis mutandis*, to that used by the House of Lords. On the 4th August 1870, the Lords made a new Standing Order, "that when a bill brought from the House of Commons shall have remained on the table of this house for twelve sitting days, without any lord giving notice of the second reading thereof, such bill shall not any longer appear in the minutes, and shall not be further proceeded with, in the same session.[4] And in 1873, the Public Worship Facilities Bill, brought from the Commons, having come under the operation of this order, was accordingly re-

[1] See Debate, 3rd June 1782, as to alterations alleged to have been made without authority by Mr. Burke, Paymaster of the Forces, in the ingrossment of a bill for regulating the pay office. 23 Parl. Hist. 989. 3 Wraxall's Mem. 431.

[2] See *supra*, p. 489.

[3] 74 Lords' J. 382.

[4] 103 Ib. 621.

moved from the minutes. But on the 20th May, the order was suspended in respect of that bill, which was allowed to proceed. Again, in 1870, the Common Law Procedure Bill, having fallen under the operation of this order, was revived on the 26th April, with a slight alteration in the title. Every bill received from the Lords, when passed, with or without amendments, is returned to them by the Commons, their lordships' house being the place of custody for bills, prior to the royal assent.[1]

Bills sent by mistake.

If a bill or clause be carried to the other house by mistake, or if any other error be discovered, a message is sent to have the bill returned, or the clause expunged, or the error otherwise rectified by the proper officer.[2] In 1844, an amendment made by the Lords, in the Merchant Seamen's Bill, was omitted from the paper of amendments returned with the bill, to the Commons. After all the amendments received by the Commons had been agreed to, the Lords acquainted the Commons, at a conference, that another amendment had been omitted, by mistake, and desired their concurrence: but the Speaker having stated that, in his opinion, it would establish a most inconvenient and dangerous precedent if they entertained the amendment, the house gave reasons, at a

[1] In sending bills from the Commons to the Lords, it was formerly the custom to wait until several had passed, when they were carried up together, and delivered at the bar of the Lords in the following order: 1. Lords' bills; 2. Commons' bills amended by the Lords; 3. Public bills in order, according to their importance; and, 4. Private bills, in such order as the Speaker appointed. It was then usual for 30 or 40 members to accompany the member who had charge of the bills. On the 17th March 1588, a private bill was sent up with only four or five members, and the Lords took exception to the smallness of the number, and said, "that they had cause to doubt that it passed not with a general consent of the house, because it passed not graced with a greater number, and left it to the consideration of the house to send it back in such sort as it was fit."—D'Ewes, 447. Order and Course of Passing Bills in Parliament, 4to. 1641.

[2] 1 Com. J. 132; 75 Ib. 447; 78 Ib. 317; 80 Ib. 512; 91 Ib. 639. 758; 92 Ib. 572; 609. Lunatic Asylums Bill; 100 Ib. 804. Poor Employment (Ireland) Bill; 101 Ib. 1277. Cruelty to Animals Bill, 103 Ib. 736. Burial Acts Amendment Bill, 1857; 112 Ib. 420. Hereford and Brecon Railway Bill, 1859; 114 Ib. 241; 119 Ib. 370. 374.

conference, for not taking the amendment into consideration, and the Lords did not insist upon it.[1]

Consideration of Lords' amendments.

By a Standing Order of the 19th July 1854, Lords' amendments to public bills are appointed to be considered on a future day, unless the house shall order them to be considered forthwith; and, accordingly, whenever expedition is necessary, an order that the amendments be considered forthwith, precedes the consideration of them;[2] but the member in charge of the bill is bound to satisfy the house that such expedition is necessary;[3] and if it be objected that the amendments have not been printed, the consideration of them will not be proceeded with.[4] Whenever the amendments are more than verbal,[5] they are ordered to be printed separately; or, in some cases, the bill, as amended by the Lords, is ordered to be printed.[6] When the order of the day is read for considering Lords' amendments to a bill, a question is put, "that the Lords' amendments be now taken into consideration," to which an amendment may be moved, to leave out "now," and add "this day three months;"[7] or to leave out "now taken into consideration," and add "laid aside:"[8] but generally the house at once proceeds to the consideration of the amendments, which, after being read a second time, are severally agreed to, or otherwise disposed of. Where the Lords have added a clause, leaving a blank for a penalty, the house has gone into committee on the clause, and filled up the blank.[9] When the question for agreeing to an amendment is before the house, an amendment to insert "not" is inadmissible, as that question may be voted against, and negatived, when put from the chair.[10] In considering Lords'

[1] 99 Com. J. 637, 638. 644. 76 Hans. Deb. 3rd Ser. 1994.

[2] 110 Com. J. 458. 464, &c. 135 Hans. Deb. 3rd Ser. 1411.

[3] Speaker's ruling, 28th June 1875; 225 Hans. Deb. 3rd Ser. 650.

[4] 235 Hans. Deb. 3rd Ser. 1742.

[5] Mr. Speaker Brand's Note-Book, 11th July 1876.

[6] 111 Com. J. 312. 324; 131 Ib. 365.

[7] 113 Ib. 349.

[8] 97 Ib. 278; 99 Ib. 572; 108 Ib. 393.

[9] 123 Ib. 345; 125 Ib. 398; 126 Ib. 420.

[10] 12th Aug. 1876; 231 Hans. Deb. 1176.

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amendments, the debate must be confined to such amendments, and may not extend to the general merits of the bill.[1]

Amendments agreed to or amended.

If one house agree to a bill passed by the other, without any amendment, no further discussion or question can arise upon it; but the bill is ready to be put into the commission, for receiving the royal assent. If a bill be returned from one house to another with amendments, these amendments must either be agreed to by the house which had first passed the bill, or the other house must waive their amendments: otherwise the bill will be lost. Sometimes one house agrees to the amendments, with amendments, to which the other house agrees.[2] Occasionally, this interchange of amendments is carried even further, and one house agrees to amendments with amendments, to which the other house agrees with amendments; to which, also, the first house in its turn, agrees.[3] A Lords' amendment has been divided, and a separate question put upon each part of it.[4] Sometimes one house does not insist upon its amendments, but makes other amendments.[5] But it is a rule, that neither house may, at this time, leave out or otherwise amend anything which they have already passed themselves; unless such amendment be immediately consequent upon amendments of the other house, which have been agreed to, and are necessary for carrying them into effect. And if an amendment be proposed to a Lords' amendment, not consequent on, or relevant to, such amendment, the question will not be put from the chair.[6] In 1678, it was stated by the Commons at a conference, "that it is contrary to the constant method and proceedings in Parliament, to strike out anything in a bill which hath been fully agreed and passed by both houses;"[7] and in allowing consequential amendments, either in the

Consequential amendments.

[1] 241 Hans. Deb. 846. 1059.

[2] 90 Com. J. 575.

[3] 111 Ib. 373; 112 Ib. 416; 118 Ib. 381. 412; 125 Ib. 384; 127 Ib. 158. 413; 128 Ib. 128. 357.

[4] Irish Church Bill, 1869; 124 Ib. 332.

[5] 125 Ib. 403.

[6] 115 Ib. 494.

[7] 9 Ib. 547; and see also 1 Ib. 388.

body of the bill, or in the amendments, the spirit of this rule is still maintained.[1] So binding, indeed, has it been held, that in 1850, a serious oversight, as to the commencement of the act, having been discovered in the Pirates' Head Money Bill, before the Lords' amendments had been agreed to, no attempt was made to correct it by way of amendment,[2] but a separate act was passed for the purpose. The title of a bill has been amended, to make it conform to amendments made by the Lords to the body of the bill.[3] In some cases the Lords have left out clauses or words, to which amendments the Commons have disagreed: but on restoring such clauses or words have, at the same time, proposed to amend them.[4]

Amendments agreed to, with special entries.

Where the Lords have made amendments to a bill which appear to affect the privileges of the Commons, in regard to matters of aid or supply, yet are not such as to render it necessary to lay the bill aside, the amendments are sometimes agreed to with a special entry in the Journal, explaining the grounds of such agreement.[5] These several agreements and amendments are communicated by one house to the other, with appropriate messages. An amendment made by one house to an amendment made by the other, should be relevant to the same subject-matter. A departure from this

[1] Municipal Corporations (Ireland) Bills, 1836, 1838 and 1840; 91 Com. J. 592; 93 Ib. 829; 95 Ib. 604; 97 Ib. 577. 597. Parliamentary Voters (Ireland) Bill, and County Courts Extension Bill, 1850; 105 Ib. 592. 596. 631. Patent Law Amendment Bill, 1852; 107 Ib. 358. Oxford University Bill, 1854; 135 Hans. Deb. 3rd Ser. 828. Dulwich College Bill, 1857; 112 Com. J. 420. Poor Law Boards (Payment of Debts) Bill, 1859. In this case the Commons disagreed to a clause inserted by the Lords, on the ground of privilege, but inadvertently agreed to a subsequent amendment, which was consequent on that clause. The Lords did not insist upon their clause, and corrected the latter part of the bill by a consequential amendment; 114 Com. J. 375. Other examples will be found; 115 Ib. 394. 491. 495. 501; 117 Ib. 344. 368; 121 Ib. 472; 131 Ib. 268. 422.

[2] 105 Ib. 471.

[3] 109 Ib. 486; Votes, 1868, p. 127.

[4] Municipal Corporations (Ireland) Bill, 4th August 1838; 93 Com. J. 824, 825, 826; 118 Ib. 326. 365; 125 Ib. 346; 127 Ib. 305. 343; 128 Ib. 346. 356.

[5] 112 Ib. 392. 418; 120 Ib. 449; 131 Ib. 321, &c. See also *infra*, Chap. XXI. on SUPPLY.

rule was permitted, under peculiar circumstances, in the case of the Bolton Police Bill, 1839: but the Lords agreed to it with a special entry in the Journal, that it was not to be drawn into a precedent; and a protest was signed by five very influential peers against agreeing to the amendment, because it had "no relation with the subject-matter of the amendment made by this house; and is inconsistent with the usual course and practice in relation to the amendment of bills, established between the two houses of Parliament."[1] Where an amendment made by the Lords has been agreed to, by mistake, with an amendment, the proceedings have been ordered to be null and void, and the amendment disagreed to.[2]

When amendments disagreed to.

When it is determined to disagree to amendments made by the other house,—1. The bill may be laid aside; 2. The consideration of the amendments may be put off for three or six months, or to any time beyond the probable duration of the session; 3. A message may be sent to communicate reasons for disagreeing to the amendments; or, 4. A conference may be desired with the other house. The two first modes of proceeding are only resorted to when the privileges of the house are infringed by the bill, or when the ultimate agreement of the two houses is hopeless;[3] the latter are preferred whenever there is a reasonable prospect of mutual agreement and compromise. Sometimes when an amendment affects the privileges of the house, it is disagreed to, the only reason offered to the Lords being that it would interfere with the public revenue, or affect the levy and application of rates, or alter the area of taxation, or otherwise infringe the privileges of the house; and it is added that the Commons do not deem it necessary to offer any further reason, hoping the above reason may be sufficient.[4] This hint of privilege

Conferences.

[1] 71 Lords' J. 643.

[2] Ware, Hadham, and Buntingford Railway, 1858; 113 Com. J. 264.

[3] 110 Com. J. 417.

[4] Naval Prize Balance Bill, 1850; Tramways (Ireland) Bill, 1860; Juries Bill, 1862; Peace Preservation (Ireland) Bill, 1870; Intoxicating Liquors Licences Suspension Bill, 1871; 126 Com. J. 432; 208 Hans. Deb. 3rd Ser. 1736.

is generally accepted by the Lords, and the amendment is not insisted upon. The practice of Parliament in regard to conferences has been fully explained elsewhere,[1] and it would be unnecessary and irksome to describe, at length, every variety of procedure which may arise in the settlement of amendments to bills by conference.[2] It will be sufficient to state generally, that when a bill has been returned by either house to the other, with amendments which are disagreed to, a message is sent, or a conference is desired, by the house which disagrees to the amendment, to acquaint the other with the reasons for such disagreement, in order to reconcile their differences, and, if possible, by mutual concessions to arrive at an ultimate agreement.[3] If such agreement cannot be secured, the bill is lost for the session.

When house agrees or does not insist, no reasons are offered.

When one house agrees to amendments made by the other, or does not insist upon its own amendments, or upon its disagreement to amendments, no reasons are offered; the object of reasons being to persuade the other house, and not to justify a resolution of its own. Thus, on the 21st July 1858, the Lords having made an amendment to the Oaths Bill, upon which they insisted, after reasons had been offered against it, at a conference: but having in the meantime passed a separate bill virtually to effect the same object—the admission of Jews to Parliament,—the Commons, in order to record the true circumstances of the case, without departing from the usage of Parliament, agreed to a resolution, "That this house does not consider it necessary to examine the reasons offered by the Lords for insisting upon the exclusion of Jews from Parliament, as, by a bill of the present session, their lordships have provided means for the admission of persons professing the Jewish religion, to seats

[1] *Supra*, p. 490, &c.

[2] All the minute details of practice may be traced by referring to the head "Conferences," in the last three Commons' General Journal Indexes; but more particularly by following the proceedings upon the Municipal Corporations Bill in 1836; the Land Law (Ireland) Bill, 1881; and the Arrears of Rent (Ireland) Bill, 1882.

[3] See 4 Hatsell, 49.

in the legislature." After which a message was sent to acquaint the Lords that the house did not insist upon their disagreement, without any reasons.[1]

Conference, by whom desired.

It will only be necessary to add, that it is irregular to demand a conference with the house which is in possession of a bill; which rule was thus affirmed by the Commons, 13th March 1575: "That by the ancient liberties and privileges of this house, conference is to be required by that court which, at the time of the conference demanded, shall be possessed of the bill, and not of any other court."[2] As the conference is desired by that house which is in possession of the bill, the bill which is the subject of the conference is always delivered by the managers, with the reasons and amendments, to the house with whom the conference was desired.

Indorsement of bills.

The official record of the assent of one house to bills passed, or amendments made by the other, is by indorsement of the bill in old Norman French. Thus, when a bill is passed by the Commons, the clerk of the house[3] writes upon the top of it, "*Soit baillé aux seigneurs.*" When the Lords make amendments, it is returned with an indorsement, signed by the clerk of the Parliaments, "*A ceste bille avesque des amendemens les seigneurs sont assentus.*" When it is sent back with these amendments agreed to, the clerk of the House of Commons writes, "*A ces amendemens les communes sont assentus;*" and bills are communicated by the Lords to the Commons with similar indorsements, *mutatis mutandis.* When amendments are *disagreed to*, such disagreement is not indorsed upon the bill, but forms the subject of a message to communicate reasons or to demand a conference.

If amendments made by the Lords are agreed to by the Commons, the latter return the bill with the message signifying their agreement. But if amendments made by the

[1] 113 Com. J. 332.

[2] Ib. 114. See *supra*, p. 494.

[3] In his absence the clerk assistant is authorized to indorse bills.

Commons are agreed to by the Lords, their lordships send a message, but retain the bill for the royal assent.

Royal assent.

When bills have been finally agreed to by both houses, they only await the royal assent to give them, as Lord Hale says, "the complement and perfection of a law;"[1] and from that sanction they cannot legally be withheld.[2] So binding is this principle, that doubts have arisen whether a Commons' bill may be read a third time and passed by the Lords, without amendment, after a commission has been submitted to the Queen, and before it is brought down to Parliament. For this reason, such third readings have sometimes been postponed: but this has not been an invariable practice.[3] On the 3rd June 1856, the Commons having adjourned, for want of forty members, before a commission was received, another commission was appointed for the 5th, and in the meantime intimation was given that no bills should be returned to the Lords agreed to without amendment, or with Lords' amendments agreed to, until after the commission, lest it should become necessary to alter the commission, so as to embrace them. For the purpose of obtaining the royal assent, bills remain in the custody of the clerk of the Parliaments, except money bills, which are returned to the Commons before the royal assent is given; and when several have accumulated, or when the royal assent is required to be given without delay to any bill, the lord chancellor has notice that a commission is wanted. The clerk of the Parliaments then prepares two lists of the titles of all the bills: one of these copies being for the clerk of the Crown to insert in the commission, and the other for her Majesty's inspection, before she signs the commission.[4] Money bills

[1] Jurisd. of Lords, c. 2.

[2] See 2 Hatsell, 339. 13 Lords' J. 756. 2 Burnet's Own Time, 274. 3 Lord Campbell's Lives of the Chancellors, 354.

[3] See Whale Fisheries Bill, 10th July 1789; 38 Lords' J. 497.

[4] The forms of commissions for declaring the royal assent, when Parliament has been opened by the Queen, and by commission, are prescribed by the rules made by her

are placed first in these lists, which are followed by public bills, local and personal, and private bills. When the Queen comes in person to give her royal assent, the clerk of the Parliaments waits upon her Majesty in the robing-room, before she enters the house, reads a list of the bills, and receives her commands upon them.[1]

Session is not concluded by royal assent.

It was formerly a matter of doubt whether a session was not concluded by the royal assent being signified to a bill. So far back as 1554, the House of Commons declared against this construction of law,[2] and yet in 1625, it was thought necessary to pass an act to declare that the session should not be determined by the royal assent being given to that and certain other acts;[3] and again in 1670, a clause to the same effect was inserted in an act:[4] but since that time, without any express enactment, the law has become defined by usage, and the royal assent is now given to every bill, shortly after it has been agreed to by both houses, without any interruption of the session.

By commission.

Origin of giving royal assent by commission.

During the progress of a session, the royal assent is generally given by a commission issued under the great seal for that purpose. The first instance in which the royal assent appears to have been given by commission was in the 33rd of Henry VIII., although proceedings very similar had occurred in the 23rd and 25th years of the reign of that king.[5] The lord chancellor produced two acts agreed to by the Lords and Commons; one for the attainder of the queen and her accomplices, and the other for proceeding against lunatics in cases of treason; each act being signed by the king, and the royal assent being signified by a commission under the great seal, signed by the king, and annexed to both the acts.[6] To pre-

Majesty by Order in Council, pursuant to the Crown Office Act, 1877. Parl. Papers, 1878 (87). These commissions now have the wafer great seal attached, instead of the old wax seal.

[1] Mr. Birch's Ev. No. 413, of 1843.

[2] 1 Com. J. 38.

[3] 1 Car. I. c. 7.

[4] 22 & 23 Car. II. c. 1, s. 9.

[5] 33 Hen. VIII. c. 21. Stat. of the Realm, vol. i. p. lxxiii.

[6] 1 Lords' J. 198.

vent any doubts as to the legality of this mode of assenting to an act, the two following clauses were put into the act for the attainder of the queen:—

"Be it declared by authority of this present Parliament, that the king's royal assent, by his letters patent under his great seal and assigned with his hand, and declared and notified in his absence to the Lords spiritual and temporal, and to the Commons assembled together in the high house, is and ever was of as good strength and force as though the king's person had been there personally present, and had assented openly and publickly to the same. And be it also enacted, that this royal assent, and all other royal assents hereafter to be so given by the kings of this realm, and notified as is aforesaid, shall be taken and reputed good and effectual to all intents and purposes, without doubt or ambiguity; any custom or use to the contrary notwithstanding."[1]

Form of commission.

In strict compliance with the words of this statute, the commission is always "by the Queen herself, signed with her own hand," and attested by the clerk of the Crown in Chancery. But on the 7th March 1702, William III. signed, with a stamp, the commission assenting to the Abjuration Act.[2] And towards the latter end of the reign of George IV., it became painful to him to sign any instrument with his own hand, and he was enabled, by statute, to appoint one or more person or persons, with full power and authority to each of them to affix, in his Majesty's presence, and by his Majesty's command, given by word of mouth, his Majesty's royal signature, by means of a stamp to be prepared for that purpose;[3] and the commission for giving the royal assent to bills on the 17th June 1830, bears the stamp of the king, attested according to the provisions of that act.[4]

Regency Bill, 1811.

On the 5th February 1811, the Regency Bill received the royal assent by commission, under peculiar circumstances. The king was incapable of exercising any personal authority: but the great seal was nevertheless affixed to a commission for giving the royal assent to that bill. When the

[1] Stat. of the Realm, vol. i. p. lxxiv.

[2] 5 Macaulay, Hist. 308.

[3] 11 Geo. IV. c. 23.

[4] 62 Lords' J. 732.

Commons had been summoned to the bar of the House of Lords by the lords commissioners, the lord chancellor said, "My lords and gentlemen, by the commands, and by virtue of the powers and authority to us given by the said commission, we do declare and notify his Majesty's royal assent to the act in the said commission mentioned, and the clerks are required to pass the same in the usual form and words;" after which the royal assent was signified by the clerk in the usual words, "*Le roy le veult.*"[1]

Form of royal assent by commission.

The form in which the royal assent is signified by commission is as follows:—Three or more of the lords commissioners, seated on a form between the throne and the woolsack in the House of Lords, command the usher of the black rod to signify to the Commons that their attendance is desired in the house of peers to hear the commission read, upon which the Commons with the Speaker immediately come to the bar. The commission is then read at length, and the titles of the bills being afterwards read by the clerk of the Crown, the royal assent to each is signified by the clerk of the Parliaments, in Norman French; and is so entered in the Lords' Journal. A money bill being carried up by the clerk of the House of Commons, is presented by the Speaker, and receives the royal assent before all other bills. The assent is pronounced in the words, "*La reyne remercie ses bons sujets, accepte leur benevolence, et ainsi le veult.*" For a public bill the form of expression is, "*La reyne le veult;*" for a private bill, "*Soit fait comme il est desiré;*" upon a petition demanding a right, whether public or private, "*Soit droit fait comme il est desiré.*" In an act of grace or pardon which has the royal assent before it is agreed to by the two houses, the ancient form of assent was, "*Les prelats, seigneurs, et communes, en ce present parlment assemblées, au nom de touts vos autres sujets, remercient*

[1] 48 Lords' J. 70. 18 Hans. Deb. 1124. See also Debates, 27th Feb. 1804 (Commons); 1st and 9th March 1804 (Lords). 1 Twiss, Life of Eldon, 2nd edit. 416. 418.

tres humblement vostre majesté, et prient à Dieu vous donner en santé bonne vie et longue;"[1] but according to more modern practice, the royal assent has been signified in the usual form, as to a public bill.[2] The form of words used to express a denial of the royal assent would be, "*La reyne s'avisera.*"[3] The necessity of refusing the royal assent is removed by the strict observance of the constitutional principle, that the Crown has no will but that of its ministers, who only continue to serve in that capacity so long as they retain the confidence of Parliament. This power was last exercised in 1707, when Queen Anne refused her assent to a bill for settling the militia in Scotland.[4]

Royal assent refused.

Use of the Norman French.

During the Commonwealth, the lord protector gave his assent to bills in English: but on the Restoration, the old form of words was reverted to, and only one attempt has since been made to abolish it. In 1706, the Lords passed a bill "for abolishing the use of the French tongue in all proceedings in Parliament and courts of justice." This bill dropped in the House of Commons; and although an act passed in 1731 for conducting all proceedings in courts of justice in English, no alteration was made in the old forms used in Parliament. Until the latter part of the reign of Edward III., all parliamentary proceedings were conducted in French, and the use of English was exceedingly rare until the reign of Henry VI. All the statutes were then enrolled in French or Latin, but the royal assent was occasionally given in English. Since the reign of Henry VII., all other proceedings have been in the English language, but the old form of royal assent has still been retained.[5]

Given by the Queen in person.

The royal assent is rarely given in person, except at the close of a session, when the Queen attends to prorogue the Parliament, and then she signifies her assent to such bills as

[1] D'Ewes, Journ. 35.

[2] 20 Lords' J. 546; 27 Ib. 137.

[3] 1 Ib. 162; 13 Ib. 394 (with reasons); 18 Ib. 506.

[4] 18 Ib. 506.

[5] See Pref. to Statutes of the Realm, for a history of the progress of the English language in parliamentary proceedings. See also Rep. of Stat. Law Commrs. 1835 (406), p. 16.

may have passed since the last commission was issued: but bills for making provision for the honour and dignity of the Crown, such as bills for settling the civil lists, have generally been assented to by the sovereign in person, immediately after they have passed both houses.[1] When her Majesty gives her royal assent to bills in person, the clerk of the Crown reads the titles, and the clerk of the Parliaments makes an obeisance to the throne, and then signifies her Majesty's assent, in the manner already described. A gentle inclination, indicative of assent, is given by her Majesty, who has, however, already given her commands to the clerk of the Parliaments, as already stated.

Given when the Queen absent from the realm.

In 1876, her Majesty being about to visit the continent during the session, it became a question whether she could give her royal assent to bills, by commission, during her absence from the realm. No case could be found in which the royal assent had been so given: but in the 2nd Will. & Mary, "for the exercise of the Government by his Majesty during his Majesty's absence" (in Ireland), there was a proviso that "nothing should be taken to exclude or debar his Majesty, during his absence from the realm, from the exercise of any act of royal power, but that every such act should be as good and effectual as if his Majesty was within this realm." And on the 7th August 1845, it was stated by the Lord Chancellor (Lyndhurst), that it was unnecessary to appoint Lords Justices, and that "any act which she could do as Sovereign

[1] See Civil List Bills, 1820, 75 Com. J. 258; 1831, 86 Ib. 517; 1838, 93 Ib. 227. On the 2nd of August 1831, the Speaker, after a short speech in relation to the bill for supporting the royal dignity of her Majesty Queen Adelaide, delivered it to the clerk, when it received the royal assent in the usual form; but the Queen, attended by one of the ladies of her bedchamber, and her maids of honour, was present, and sat in a chair placed on a platform raised for that purpose between the archbishops' bench and the bishops' door, and after the royal assent was pronounced, her Majesty stood up and made three courtesies, one to the king, one to the Lords, and one to the Commons.—63 Lords' J. 885, and Index to that volume, p. 1157. The precedent here followed was that of George III. and Queen Charlotte: Earl Grey's Corr. with Will. IV., i. 314.

would have as much validity and effect, if done on the continent of Europe, as if done in her own dominions."[1] And in 1876, the Lord Chancellor (Cairns) gave it as his clear opinion (privately) that her Majesty would be able to give the royal assent to bills while absent from the realm; and accordingly her Majesty left England at the latter end of March. During her absence, the royal assent was signified to several bills on the 7th April.

Ingrossment rolls.

When acts are passed, the original ingrossment rolls (or, since 1849, the authenticated vellum prints) are preserved in the House of Lords; and all public and local and personal acts, and nearly all private acts, are printed by the Queen's printer; and printed copies are referred to as evidence in courts of law. The original rolls or prints may also be seen when necessary, and copies taken, on the payment of certain fees.

Commencement of Act.

All Acts of Parliament, of which the commencement was not specifically enacted, were formerly held, in law, to take effect from the first day of the session: but the clerk or clerk assistant of the Parliaments is now required by act 33 Geo. III. c. 13, to indorse, in English, on every Act of Parliament, immediately after the title, the day, month, and year when the same shall have passed and received the royal assent, which indorsement is to be a part of the act, and to be the date of its commencement, when no other commencement is provided in the act itself.

Forms not binding in the progress of bills.

The forms commonly observed by both houses, in the passing of bills, having been explained, it must be understood that they are not absolutely binding. They are founded upon long parliamentary usage, indeed; but either house may vary its own peculiar forms, without question elsewhere, and without affecting the validity of any act which has received, in proper form, the ultimate sanction of the three branches of the legislature. If an informality be

[1] 82 Hans. Deb. 3rd Ser. 1515.

discovered during the progress of a bill, the house in which it originated will either order the bill to be withdrawn, or will annul the informal proceeding itself, and all subsequent proceedings:[1] but if irregularities escape detection until the bill has passed, no subsequent notice can be taken of them, as it is the business of each house to enforce compliance with its own orders and practice.

Bills passed with unusual expedition.

In the ordinary progress of a bill, the proceedings either follow from day to day, or some days are allowed to intervene between each stage subsequent to the first reading; yet when any sudden occasion or pressing emergency has arisen, bills have frequently been passed through all their stages in the same day, and even by both houses.[2] And, in some extraordinary cases, the royal assent has also been signified on the same day.[3] This unusual expedition is commonly called

[1] 106 Com. J. 82. 209; 108 Ib. 578; 134 Ib. 300.

[2] 58 Ib. 645, 646; 98 Ib. 491; 103 Ib. 770; 107 Ib. 77. 363. 378; 108 Ib. 21; 110 Ib. 294; 121 Ib. 239 (Forsyth's Indemnity Bill, 1866). Lord Byron's Indemnity Bill, 1880, 135 Ib. 306; 254 Hans. Deb. 3rd Ser. 646, &c.

[3] Bill for recruiting the land forces, 3rd April 1744; 24 Com.J. 636—639; Seamen's Additional Pay Bill, 9th May 1797; 52 Ib. 555. 557, 558. Habeas Corpus Suspension (Ireland) Bill, 17th February 1866; 121 Ib. 88. In this latter case, the bill was passed by both houses on a Saturday, and the Queen being at Osborne, the commission, with the bill annexed, was forwarded to her Majesty in the morning, and the agreement of both houses having been communicated later in the day by telegraph, her Majesty signed the commission and despatched it to Westminster. The messenger, however, was delayed on the railway, and the royal assent was not given until a quarter before one on Sunday morning. At the close of the Session, in 1871, the Queen being at Balmoral, the telegraph was again used for expediting the prorogation. The commission containing the titles of all the bills to which the agreement of both houses was expected, having been despatched to Scotland, such agreement was afterwards communicated by telegraph; and the commission was there duly signed by her Majesty, and returned by messenger to Westminster. The same expedient was adopted in April 1876, while the Queen was in Germany, a day being thus saved in obtaining the royal assent to the Mutiny Bills, before the Easter adjournment. On the 9th April 1883, the Explosive Substances Bill was passed through all its stages, in both houses, and received the royal assent on the following day at twelve o'clock. The bill was sent up to the Lords before seven o'clock; but their lordships were engaged, until a late hour, upon a debate relating to India.

"a suspension of the Standing Orders," and in the Lords is at variance with a distinct order against the passing of a bill through more than one stage in a day,[1] and which is formally dispensed with on such occasions.[2] On the 17th February 1866, notice had been given on the previous day, to suspend the Standing Orders, in respect of the Habeas Corpus Suspension (Ireland) Bill: but on the 9th April 1883, no such notice having been given in regard to the Explosive Substances Bill, the house resolved, "That it was essentially necessary for the public safety that the bill should be proceeded in with all possible despatch, and that notwithstanding the Standing Orders, Nos. 35 and 49, the Lord Chancellor ought forthwith to put the question upon every stage of the said bill, on which this house shall think it necessary for the public safety to proceed thereon;" and immediately passed the bill through all its stages.[3] But in the Commons there are no orders which forbid the passing of public bills with unusual expedition; and it is nothing more than an occasional departure from the usage of Parliament, justified by the circumstances of the particular case. From the urgent necessity of such occasions, the bills so passed are often of great importance in themselves, and may require more deliberation than bills passed with the ordinary delays and intervals. On this ground the practice may appear objectionable: but it must be recollected that no bill can pass rapidly without the general, if not unanimous, concurrence of the house. One stage may follow another with unaccustomed rapidity: but they are all as much open to discussion as at other times. In less important bills two or more stages are occasionally passed in the same day: but never without the general assent of the house.[4]

Informalities

But, though a departure from the usage of Parliament,

Lords' Min. 333. In the Commons, printed copies of the draft bill had been delivered in the Vote Office at twelve o'clock, and the complete bill, directly it had been read a first time, and ordered to be printed.

[1] Lords' S. O. Nos. 35. 49.

[2] 80 Lords' J. 662; 98 Ib. 41.

[3] Lords' Min. 333.

[4] 184 Hans. Deb. 3rd Ser. 2107.

during the progress of a bill, will not vitiate a statute, informalities in the final agreement of both houses have been treated as if they would affect its validity. No decision of a court of law upon this question has ever been obtained; but doubts have arisen there; and in two modern cases Parliament has thought it advisable to correct, by law, irregularities of this description. It has already been explained that, when one house has made amendments to a bill passed by the other, it must return the bill with the amendments, for the agreement of that house which first passed it. Without such a proceeding, the assent of both houses could not be complete; for, however trivial the amendments may be, the judgment of one house only would be given upon them, and the entire bill, as amended and ready to become law, would not have received the formal concurrence of both houses. If, therefore, a bill should receive the royal assent, without the amendments made by one house having been communicated to the other and agreed to, serious doubts naturally arise concerning the effect of this omission; since the assent of the Queen, Lords, and Commons is essential to the validity of an act. 1. Will the royal assent cure all prior irregularities, in the same way as the passing of a bill in the Lords would preclude inquiry as to informalities in any previous stage? 2. Is the indorsement on the bill, recording the assent of Queen, Lords, and Commons, conclusive evidence of that fact? or, 3. May the Journals of either house be permitted to contradict it?

in the agreement of both houses.

The first case in which a difficulty arose was in the 33rd Henry VI. In the session commencing 29th April 1450, the Commons had passed a bill requiring John Pylkington to appear, on a charge of rape, "by the feast of Pentecost then next ensuing."[1] It does not appear distinctly whether the bill was even brought into the Commons before that day in the year 1450: but it certainly was not agreed to by the Lords until afterwards. By the law of Parliament then

Pylkington's case, 33 Hen. 6.

[1] Year Books, 33 Hen. VI. Parl. Rep. No. 413, of 1843.

subsisting, the date of an act was reckoned from the beginning of a session; and the Lords, to avoid this construction, altered the date to "the feast of Pentecost, which will be in the year of our Lord 1451:" but did not return the bill, so amended, to the Commons. Pylkington appeared before the Exchequer Chamber, to impeach the validity of this act, "because the Lords had granted a longer day than was granted by the Commons, in which case the Commons ought to have had the bill back." Chief Justice Fortescue held the act to be valid, as it had been certified by the king's writ to have been confirmed by Parliament: but Chief Baron Illingworth and Mr. Justice Markham were of opinion, that if the amendment made the bill vary in effect from that which was sent up from the Commons, the act would be invalid. No decision is recorded in the Year Books; and the evidence respecting the dates was too imperfect to justify more than hypothetical opinions. Fortescue, C. J., concluded the case by saying,

> "This is an Act of Parliament, and we will be well advised before we annul any Act made in Parliament; and, peradventure, the matter ought to wait until the next Parliament, then we can be certified by them of the certainty of the matter: but, notwithstanding, we will be advised what shall be done."

Factories Bill.

In 1829, a bill "to amend the law relating to the employment of children in factories," passed the Commons, and was agreed to by the Lords, with an amendment: but instead of being returned to the Commons, it was, by mistake, included in a commission, and received the royal assent. The amendment was afterwards agreed to by the Commons: but, in order to remove all doubts, an Act[1] was passed to declare that the Act "shall be valid and effectual to all intents and purposes, as if the amendment made by the Lords had been agreed to by the Commons, before the said Act received the royal assent."

[1] 10 Geo. IV. c. 63.

In 1843, the Schoolmasters' Widows' Fund (Scotland) Bill was returned to the Commons with amendments; but, before these were agreed to, the bill was removed from the table, without authority from the house, and carried up to the Lords with other bills. The proper indorsement, viz. "*A ces amendemens les communes sont assentus*," was not upon this bill; yet the omission was not observed, and the bill received the royal assent on the 9th May. After an examination of precedents, this act was made valid by a new enactment.[1] Schoolmasters' Widows' Fund Bill.

It is a curious fact, in connection with an informality of this character, on the face of a bill, that a commission expressly recites that the bills "have been agreed to by the Lords spiritual and temporal, and the Commons, and indorsed by them as hath been accustomed." The informality in this case would therefore appear to have been greater than in that of 1829; because, in the former, the indorsements were complete, and as they are without date, it would not appear, except from the Journals, that the amendment had been agreed to after the royal assent had been given: but in the latter, the agreement of the Commons would be wanting on the face of the record. Imperfect indorsement.

In case of any accidental omission in the indorsement, the bill should be returned to the house whence it was received; as, on the 8th March 1580, 23 Eliz., when a schedule was returned to the Commons and the indorsement amended there; because "*soit baillé aux seigneurs*" had been omitted, and the Lords had therefore no warrant to proceed.[2]

Having noticed the effect of informalities in the consent of both houses to a bill, the last point that requires any observation is the consequence of a defect, or informality, in the commission, or royal assent. On the 27th January 1546, when King Henry VIII. was on his death-bed, the lord chancellor brought down a commission under the sign Informalities in royal assent.

[1] 6 & 7 Vict. c. lxxxvi. (local and personal).

[2] D'Ewes, 303. 1 Com. J. 132. Order and Course of Passing Bills in Parliament, 4to. 1641.

Duke of Norfolk's attainder.

manual, and sealed with the great seal, addressed to himself and other lords, for giving the royal assent to the bill for the attainder of the Duke of Norfolk, which had been passed, with indecent haste, through both houses. Early the next morning the king died, and the duke was saved from the scaffold; but was imprisoned in the Tower during the whole reign of Edward VI. On the accession of Queen Mary, he took his seat in the House of Lords, was appointed to be one of the triers of petitions; and also, by patent, on the 17th August, to be lord high steward, for the trial of the Duke of Northumberland.

Declared void.

The political causes which restored him to favour, will account for the impunity he enjoyed, notwithstanding his attainder: but in the next session the Act of Attainder was declared, by statute,[1]

"To have been void and of none effect," because there were no words in the commission "whereby it may appere that the saide late king did himself give his royall assent to the saide bill; and for that also the saide commissyon was not signed with his hignes hande, but with his stampe putt thereunto in the nether parte of the writing of the said commissyon, and not in the upper parte of the said commissyon, as his hignes was accustomed to doo; nor that it appereth of any recorde that the saide commissyoners did give his royall consent to the bill aforesaide; therefore all that was done by virtue of the said commissyon was clerelie voyde in the lawe, and made not the same bill to take effecte, or to be an Acte of Parlyament," but it "remayneth in verie dede as no Acte of Parlyament, but as a bill onelie exhibited in the saide Parlyament, *and onelie assented unto by the saide lordes and comons*, and not by the saide late king."

The same act declared,

"That the lawe of this realme is and alwaies hath byn, that the royall assent or consent of the king or kings of this realme, to any Acte of Parlyament ought to be given in his own royall presence, being personallie in the higher howse of Parlyament, or by his letters patents under his great seale, assigned with his hande, and declared and notified in his absence to the lords spiritual and temporal, and the Comons, assembled together in the higher howse, according to a statute made in the 33rd yere of the reigne of the saide late King Henry VIII."

[1] 1 Mary, No. 27; Introduction to Statutes of Rec. Com. p. 75.

Transposition of titles.

In 1809, the titles of two bills relating to the town of Worthing were transposed, and the royal assent signified to both, so incorrectly indorsed, without further notice. But, in 1821, the titles of two local acts had been, by a similar error, transposed in the indorsement when the bills received the royal assent. Each act, consequently, had been passed with the title belonging to the other; and the mistake was corrected by Act of Parliament.[1]

Royal assent given by mistake.

In 1844, there were two Eastern Counties Railway Bills in Parliament. One had passed through all its stages, and the other was still pending in the House of Lords, when on the 10th May the royal assent was given, by mistake, to the latter, instead of to the former. On the discovery of the error, an act was passed by which it was enacted that when the former act *shall have received the royal assent*, it shall be as valid and effectual from the 10th May, as if it had been properly inserted in the commission, and had received the royal assent on that day; and that the other bill shall be in the same state as if its title had not been inserted in the commission, and shall not be deemed to have received the royal assent.[2]

[1] 1 & 2 Geo. IV. c. xcv. (local and personal).

[2] 7 Vict. c. xix. (local and personal).

CHAPTER XIX.

ANCIENT MODE OF PETITIONING PARLIAMENT. FORM AND CHARACTER OF MODERN PETITIONS; PRACTICE OF BOTH HOUSES IN RECEIVING THEM.

The people communicate with Parliament by petition.

THE various communications between the several branches of the legislature which have been described in the last three chapters, lead to the consideration of petitions, by which the people are brought into communication with the Parliament.

Ancient mode of petitioning.

The right of petitioning the Crown and Parliament, for redress of grievances, is acknowledged as a fundamental principle of the constitution;[1] and has been uninterruptedly exercised from very early times. Before the constitution of Parliament had assumed its present form, and while its judicial and legislative functions were ill-defined, petitions were presented to the Crown, and to the great councils of the realm, for the redress of those grievances which were beyond the jurisdiction of the common law. There are petitions in the Tower of the date of Edward I., before which time it is conjectured that the parties aggrieved came personally before the council, or preferred their complaints in the country before inquests composed of officers of the Crown.

From Edw. I. to Henry IV.

Assuming that the separation of the Lords and Commons had been effected in the reign of Henry III.,[2] these petitions appear to have been addressed to the Lords alone: but, taking the later period, of the 17th Edward III., for the separation of the two houses, they must have been addressed to the whole body then constituting the High Court of

[1] "Nulli negabimus, aut differemus rectum vel justitiam." — Magna Charta of King John, c. 29. See Bill of Rights, Art. 5; 1 & 2 Will. & Mary, sess. 2, c. 2.

[2] See *supra*, p. 24.

Parliament. Be this as it may, it is certain that, from the reign of Edward I., until the last year of the reign of Richard II.,[1] no petitions have been found which were addressed exclusively to the Commons.

Receivers and triers of petitions.

During this period the petitions were, with few exceptions, for the redress of private wrongs; and the mode of receiving and trying them was judicial, rather than legislative. Receivers and triers of petitions were appointed, and proclamation was made, inviting all people to resort to the receivers. These were ordinarily the clerks of the chancery, and afterwards the masters in chancery (and still later some of the judges), who, sitting in some public place accessible to the people, received their complaints, and transmitted them to the auditors or triers. The triers were committees of prelates, peers, and judges, who had power to call to their aid the lord chancellor, the lord treasurer, and the serjeants-at-law. By them the petitions were examined; and in some cases the petitioners were left to their remedy before the ordinary courts; in others, their petitions were transmitted to the chancellor, or to the judges on circuit; and if the common law offered no redress, their case was submitted to the High Court of Parliament.[2] The functions of receivers and triers of petitions have long since given way to the immediate authority of Parliament at large: but their appointment, at the opening of every Parliament, has been continued by the House of Lords without interruption. They are still constituted as in ancient times, and their appointment and jurisdiction are expressed in Norman French.[3]

Receivers and triers still appointed.

Reign of Henry IV.

In the reign of Henry IV., petitions began to be addressed, in considerable numbers, to the House of Commons. The courts of equity had, in the meantime, relieved Parliament of much of its remedial jurisdiction; and the petitions were now

[1] 3 Rot. Parl. 448.

[2] See Elsynge, chap. 8; Coke, 4th Inst. 11.

[3] There are receivers and triers for Great Britain and Ireland; and others for Gascony and the lands and countries beyond the sea, and the Isles. No spiritual lords are now appointed triers; 73 Lords' J. 579; 80 Ib. 13; 89 Ib. 11.

Petitions to the Commons.

Origin of private bills.

more in the nature of petitions for private bills, than for equitable remedies for private wrongs. Of this character were many of the earliest petitions; and the orders of Parliament upon them can only be regarded as special statutes, of private or local application. As the limits of judicature and legislation became defined, the petitions applied more distinctly for legislative remedies, and were preferred to Parliament through the Commons:[1] but the functions of Parliament, in passing private bills, have always retained the mixed judicial and legislative character of ancient times.

Change of system.

Proceeding to later times, petitions continued to be received in the Lords, by triers and receivers of petitions, or by committees whose office was of a similar character; and in the Commons, they were referred to the committee of grievances, and to other committees specially appointed for the examination and report of petitions:[2] but since the Commonwealth, it appears to have been the practice of both houses to consider petitions in the first instance,[3] and only to refer the examination of them, in particular cases, to committees. In early times, all petitions prayed for the redress of some specific grievance: but after the Revolution of 1688, the present practice of petitioning, in respect of general measures of public policy, was gradually introduced.[4]

From this summary of ancient customs, it is now time to pass to the existing practice in regard to petitions, which it will be convenient to consider under three divisions; viz. 1. The form of petitions; 2. The character and substance of petitions; 3. Their presentation to Parliament.

Form of petitions.

1. Petitions to the House of Lords should be superscribed,

[1] See 1 Parl. Writs, 160; 2 Ib. 156. 3 Rot. Parl. 448. Coke, 4th Inst. 11. 21. 24. Elsynge, c. 8. Hale, Jurisd. of the Lords, chap. 6–13. Report on Petitions, 1833 ($\frac{2}{6}\frac{2}{3}\frac{2}{9}$); especially the learned evidence of Sir F. Palgrave.

[2] 1 Com. J. 582; 2 Ib. 49. 61; 3 Ib. 649; 4 Ib. 228; 7 Ib. 287.

[3] 11 Lords' J. 9. 57. 184; 14 Ib. 23. 12 Com. J. 83.

[4] See 13 Chas. II. c. 5; 10 Com. J. 88; 13 Ib. 287; Ib. 518 (Kentish petition, 1701); 18 Ib. 425. 429, 430, 431 (Septennial Bill). 2 Hallam, Const. Hist. 435, *n*. 2 May, Const. Hist. 60 (7th ed.).

"To the right honourable the lords spiritual and temporal in Parliament assembled;"[1] and to the House of Commons, "To the honourable the Commons (or knights, citizens, and burgesses) of the United Kingdom of Great Britain and Ireland in Parliament assembled." A general designation of the parties to the petition should follow; and if there be one petitioner only, his name after this manner: "The humble petition of [here insert the name or other designation], sheweth." The general allegations of the petition are concluded by what is called the "prayer," in which the particular object of the petitioner is expressed. To the whole petition are generally added these words of form, "And your petitioners, as in duty bound, will ever pray, &c.;" to which are appended the signatures, or marks of the parties.

Remonstrances.

Without a prayer, a document will not be taken as a petition;[2] and a paper, assuming the style of a declaration,[3] an address of thanks,[4] or a remonstrance only,[5] without a proper form of prayer, will not be received. The rule upon this subject has thus been laid down in the Commons. On the 10th August 1842, a member offered a remonstrance; when Mr. Speaker said,—

"That the custom was this, that whenever remonstrances were presented to the house, coupled with a prayer, they were received as petitions: but when they were offered without a prayer, the rule was to refuse them." He added, "That there was a Standing Order requiring that the prayer of every petition should be stated by the member presenting it; from which it is obvious that a prayer is essential to constitute a petition."[6]

In other cases, remonstrances respectfully worded, and concluding with a proper form of prayer, have been received:[7] but a document, distinctly headed as a remonstrance, though

[1] A petition intended for the last Parliament will not be received. See Mir. of Par. 1831, vol. 3, p. 2199.

[2] 7 Com. J. 427; 98 Ib. 457.

[3] 60 Hans. Deb. 3rd Ser. 640.

[4] 64 Ib. 423.

[5] 97 Com. J. 470; 98 Ib. 461.

[6] 65 Hans. Deb. 3rd Ser. 1225. 1227. See also 67 Com. J. 398; 74 Ib. 391.

[7] From Finsbury, June 21st 1860; 159 Hans. Deb. 3rd Ser. 761. Coast Defence Association, July 6th 1860; Ib. 1524.

concluding with a prayer, has been refused.[1] A so-called memorial, properly worded, and concluding with a prayer, has been received.[2]

Signatures, &c.

The petition should be written upon parchment or paper, for a printed or lithographed petition will not be received by the Commons;[3] and at least one signature should be upon the same sheet or skin upon which the petition is written.[4] It must be in the English language,[5] or accompanied with a translation, which the member who presents it states to be correct;[6] it must be free from interlineations or erasures;[7] it must be signed;[8] it must have original signatures or marks, and not copies from the original,[9] nor signatures of agents on behalf of others, except in case of incapacity by sickness;[10] and it must not have letters,[11] affidavits,[12] appendices,[13] or other documents annexed. The signatures must be written upon the petition itself, and not pasted upon, or otherwise transferred to it.[14] Petitions of corporations aggregate should be under their common seal. To these rules another may be added, that if the chairman of a public meeting signs a petition on behalf of those assembled, it is only received as the petition of the individual, and is so entered in the Minutes or Votes,[15] because the signature of one party for others cannot be recognised.[16]

[1] 70 Hans. Deb. 3rd Ser. 745.

[2] 240 Ib. 1682.

[3] 48 Com. J. 738; 68 Ib. 624. 648; 72 Ib. 128. 156; 53 Hans. Deb. 3rd Ser. 158. This rule has not been adopted by the Lords.

[4] 62 Com. J. 155; 72 Ib. 128. 144; 77 Ib. 127. 66 Hans. Deb. 3rd Ser. 1032. 100 Com. J. 335; 109 Ib. 293. If petitions are presented without any signatures to the sheet on which they are written, they are not noticed in the Votes.

[5] 76 Com. J. 173.

[6] Ib. 189; 100 Ib. 560.

[7] 82 Ib. 262; 86 Ib. 748.

[8] 85 Ib. 541; 91 Ib. 325.

[9] 91 Ib. 576.

[10] 9 Ib. 369. 433; 10 Ib. 285; 34 Ib. 800; 82 Ib. 118; 91 Ib. 576. See also Rep. of Pub. Petitions Committee, 26th June 1848.

[11] 81 Com. J. 82.

[12] 82 Ib. 41.

[13] 111 Ib. 102.

[14] 104 Ib. 283 (Special Rep. of Petitions Committee). See also Special Report; 105 Ib. 79.

[15] Of late years the practice of entering petitions in the Commons' Journal has been discontinued, a reference being given to the Reports of the Committee on Public Petitions.

[16] 10 Com. J. 285.

Any forgery or fraud in the preparation of petitions, or in the signatures attached, or the being privy to, or cognizant of, such forgery or fraud, is liable to be punished as a breach of privilege. By a resolution of the House of Commons, 2nd June 1774, it was declared, Forgery or fraud.

"That it is highly unwarrantable, and a breach of the privilege of this house, for any person to set the name of any other person to any petition to be presented to this house."[1]

And there have been frequent instances, in which such irregularities have been discovered and punished by both houses.[2] In some cases the house has satisfied itself by the rejection of the petition,[3] or by discharging the order for its lying on the table.[4]

2. The language of a petition should be respectful and temperate, and free from disrespectful language to the Queen,[5] or offensive imputations upon the character or conduct of Parliament,[6] or the courts of justice,[7] or other tribunal,[8] or constituted authority.[9] On the 22nd March 1822, a petition from Newcastle, imputing notorious corruption to the House of Commons, was, on a division, not received.[10] On the 2nd August 1832, a petition threatening Character and substance of petitions.

[1] 34 Com. J. 800.

[2] Ballinasloe petition (R. Pilkington) 1825; 80 Ib. 445. Athlone election petition (T. Flanagan); 82 Ib. 561. 582; 84 Ib. 187; 89 Ib. 92. Epworth petition, 1843; 98 Ib. 523. 528. Cheltenham petition, 2nd March 1846; Liverpool Corporation Waterworks Bill; Lords' Journals and Debates, 22nd July and 13th August 1850. Aylesbury Election Petition, 1851; 106 Com. J. 193. 289. Prince Azeem Jah (J. M. Mitchel and others), 1865; 120 Ib. 157. 336. Special Report of Committee on the Glasgow Municipality Extension Bill, 1879; 134 Ib. 175. 180. East Gloucester Railway Bill, 1862; 94 Lords' J. 300. 321. 378. 386.

[3] Halifax petition, 5th July 1867; 122 Ib. 345. Special Report of Petitions Committee, 22nd July 1872; 127 Com. J. 370. 395.

[4] Petitions from Dublin against the Sale of Intoxicating Liquors on Sunday (Ireland) Bill, 1878. Special Reports of Public Petitions Committee, 21st March and 11th April 1878; 133 Com. J. 130. 139; Special Report, 20th April 1883, &c.

[5] 122 Hans. Deb. 3rd Ser. 863.

[6] 82 Com. J. 589; 84 Ib. 275.

[7] 76 Ib. 105.

[8] Ib. 92; 83 Ib. 541.

[9] 78 Ib. 431; 91 Ib. 698.

[10] 6 Hans. Deb. N. S. 1231.

to resist the law, was not allowed to lie upon the table.[1] In 1838, a petition containing disrespectful language towards the other house of Parliament was withdrawn.[2] In 1840, a petition from J. J. Stockdale was rejected, as containing an intentional and deliberate insult to the house.[3] On the 28th March 1848, a petition having been brought up and read, objection was taken to a paragraph praying for the abolition of the House of Lords, on the ground that it prayed for a fundamental alteration of the institutions of the country: but the objection, after debate, was not pressed, and the petition, being otherwise temperately expressed, was ordered to lie upon the table.[4] On the 3rd May 1867, a petition in favour of certain Fenian prisoners, expressed in strong but guarded language, was allowed to lie upon the table; and a motion afterwards made for discharging that order was not supported by the house.[5] On the 8th June 1874, notice being taken that a petition contained offensive imputations upon the conduct of the Public Petitions Committee, it was ordered to be withdrawn.[6] On the 3rd July 1874, notice being taken that a petition contained imputations upon the conduct of certain judges, and statements affecting the social and legal position of individuals, it was ordered to be withdrawn, and the printed copies to be cancelled.[7] On the 12th April 1875, the Public Petitions Committee reported that a petition from Prittlewell contained offensive imputations upon the Lord Chief Justice and two of the judges of the Court of Queen's Bench, and reflected, in an unbecoming manner, upon the Speaker and the proceedings of the house;[8] and on the 15th April, the order for the petition to lie upon the table was, after discussion, read and discharged.[9] A petition may not allude to debates in either

[1] 87 Com. J. 547.
[2] 93 Ib. 236.
[3] 95 Ib. 193.
[4] 103 Ib. 384; 97 Hans. Deb. 3rd Ser. 1055.
[5] 186 Ib. 1929; 187 Ib. 1886.
[6] 129 Com. J. 209.
[7] Ib. 276.
[8] 130 Ib. 134.
[9] Ib. 145; Hans. Deb. 15th April 1875; Mr. Speaker Brand's Note-Book.

house of Parliament,[1] nor to intended motions, if merely announced in debate:[2] but when notices have been formally given, and printed with the Votes, petitions referring to them are received. On the 31st March 1848, notice was taken that in a petition which had been printed with the Votes, reference was made "to what passed in a debate in this house, in violation of the rules and practice of the house;" and the orders, that such petition do lie upon the table, and be printed, were read and discharged, and the petition, as printed in the appendix to the Votes, was ordered to be cancelled.[3] A petition to the Commons, praying directly or indirectly for an advance of public money;[4] for compounding or relinquishing any debts due to, or other claims of, the Crown;[5] or for remission of duties or other charges payable by any person,[6] or for a charge upon the revenues of India,[7] will only be received if recommended by the Crown. Petitions distinctly praying for compensation, or indemnity for losses, out of the public revenues, are viewed under this category and are constantly refused unless recommended by the Crown:[8] but petitions are received which pray that provision should be made for the compensation of petitioners, for losses contingent upon the passing of bills pending in Parliament.[9] Sometimes such petitions are presented with the Queen's recommendation.[10] In the Lords, a petition relating to a bill before the Commons, but which has not yet reached the house, or which has been already thrown out, will not be received.

Petition from person attainted.

On the 18th June 1849, a petition was offered from W. S. O'Brien and others, attainted of treason, praying to

[1] 77 Com. J. 150; 82 Ib. 604; 91 Ib. 616; 97 Ib. 259; 103 Ib. 633; 105 Ib. 160, 19th Feb. 1851 (Window Tax). 109 Ib. 160.

[2] 85 Ib. 107; 63 Hans. Deb. 3rd Ser. 192; 114 Ib. 820.

[3] 103 Com. J. 406.

[4] 90 Ib. 42. 487. 507; 111 Ib. 247; 119 Ib. 177.

[5] 75 Ib. 167; 81 Ib. 66; 83 Ib. 212.

[6] 81 Ib. 353; 92 Ib. 372 (Duke of Marlborough).

[7] 111 Ib. 366.

[8] 73 Ib. 157; 74 Ib. 422; 87 Ib. 571; 90 Ib. 487; 104 Ib. 223, &c., &c.

[9] 90 Ib. 136; 92 Ib. 469.

[10] 93 Ib. 586.

be heard by counsel against the Transportation for Treason (Ireland) Bill. It was objected that no petition could be received from persons civilly dead: but the house, after debate, agreed, under the peculiar and exceptional circumstances of the case, to receive the petition. The petitioners' sentence of death had been commuted to transportation; they had denied the legal power of the Lord Lieutenant to transport them, and the bill against which they had petitioned was introduced in order to remove doubts upon the question which they had raised. It was, in fact, a bill to declare the legality of a sentence which they maintained to be contrary to law. Before the introduction of the bill, a petition from W. S. O'Brien, upon the subject of his sentence, had been already received by the house.[1]

Petitions from abroad.

Petitions from British subjects resident abroad have always been received; and also of foreigners resident in this country. Petitions have also been occasionally received from foreigners not within British jurisdiction: but on the 7th April 1876, a petition from inhabitants of Boulogne-sur-Mer, several of whom appeared to be British subjects, being offered, a committee was appointed to consider the advisability of receiving it, which, having taken evidence and searched for precedents, did not advise its reception.[2]

Presentation of petitions.

3. Petitions are to be presented by a member of the house to which they are addressed. But petitions from the corporation of London are presented to the House of Commons by the sheriffs, at the bar,[3] (being introduced by the serjeant, with the mace),[4] or by one sheriff only, if the other be a member of the house,[5] or unavoidably absent.[6] In 1840, both the sheriffs being in the custody of the serjeant-at-arms, petitions from the corporation of London were presented at

[1] 106 Hans. Deb. 3rd Ser. 389.

[2] 131 Com. J. 181. 200. Rep. of Com.; 228 Hans. Deb. 3rd Ser. 1411.

[3] On the 17th April 1690, a question for admitting the sheriffs was negatived, on division; 5 Parl. Hist. 586.

[4] MS. Officers and Usages of the House of Commons, p. 46.

[5] 90 Com. J. 506; 103 Ib. 122. 331. 731; 136 Ib. 248.

[6] 75 Ib. 213; 94 Ib. 432.

the bar, by the lord mayor, an alderman, and several of the common council;[1] by the lord mayor, aldermen, and commons;[2] and by two aldermen, and several members of the common council.[3] Petitions from the corporation of Dublin may be presented in the same manner, by their lord mayor.[4] If the lord mayor should be a member, he must present the petition, in his place as a member, and not at the bar.[5] If the sheriffs (or lord mayor of Dublin, not being a member), had more than one petition to present, they were formerly directed to withdraw when the first had been received, and were again called in to present the other:[6] but this formality is now dispensed with. The privilege of presenting petitions at the bar, by the lord mayor of Dublin, had not been enjoyed in the Parliament of Ireland, and was conceded here, for the first time, not without objection, on the 23rd February 1813. Lord Cochrane proposed to extend the same privilege to the lord provost of Edinburgh, but his amendment was lost, Mr. Tierney remarking "that the Scotch were generally thought a prudent people, and the corporation of Edinburgh would know better than to send their provost four hundred miles, to present a petition."[7] A peer or member may petition the house to which he belongs; but if a member desire to have a petition from himself presented to the house, he should entrust it to some other member, as he will not be permitted to present it himself.[8] A member who has not taken the oath, or affirmation, cannot present a

[1] 95 Com. J. 43.

[2] Ib. 82.

[3] Ib. 198.

[4] By resolution, 23rd Feb. 1813; 68 Ib. 209; 24 Hans. Deb. 698; 124 Com. J. 85; 127 Ib. 266; 134 Ib. 269; 136 Ib. 10; 137 Ib. 288.

[5] On the 1st July 1850, a petition from the corporation of Dublin was presented by the lord mayor in his place as a member (wearing his robes). The officers of the corporation, in their robes, were allowed seats below the bar; but having brought the mace into the house, they were desired by the serjeant to remove it; MS. note. So again Friday, March 14th, 1851; 6th Feb. 1880, and on several other occasions.

[6] MS. Officers and Usages of the House of Commons, p. 46.

[7] 68 Com. J. 209; 24 Hans. Deb. 698. 705.

[8] So ruled by Mr. Speaker, 30th August 1841 (Sir Valentine Blake); 59 Hans. Deb. 3rd Ser. 476. 30th April 1846 (Sir J. Graham), and 9th July 1850 (Mr. F. O'Connor).

petition.[1] Petitions are not received on the first day of the session, when the Queen's Speech is delivered, and other business transacted in connection with the opening of Parliament.[2]

Transmission by post.

To facilitate the presentation of petitions, they may be transmitted through the post-office, to members of either house, free of postage, provided they be sent without covers, or in covers open at the sides, and do not exceed 32 oz. in weight.[3]

To be read by members.

In both houses it is the duty of members to read petitions which are sent to them, before they are presented, lest any violation of the rules of the house should be apparent on the face of them; in which case it is their duty not to offer them to the house. If the Speaker observes, or any member takes notice of, any irregularity, the member having charge of the petition does not bring it up, but returns it to the petitioners. If any irregularity escapes detection at this time, but is discovered when the petition is further examined, no entry of its presentation appears in the Votes. In other cases more formal notice is taken of the violation of the rules of the house, and the petitions are not received;[4] or are ordered to be withdrawn,[5] or are rejected.[6] A member who has reason to believe that the signatures to a petition are genuine, is justified in presenting it, although doubts may have been raised as to their authenticity: but in such cases the attention of the house should be directed to the circumstance.[7]

Petitions not received, withdrawn and rejected.

Presentation of petitions.

Up to this point the practice of the Lords and Commons is similar: but the forms observed in presenting petitions differ so much, that it will be necessary to describe them

[1] 137 Com. J. 295.

[2] In Feb. 1880, the Lord Mayor of Dublin had arranged to present a petition on the day of meeting, but on receiving an intimation of the practice, he postponed the ceremony until the next day.

[3] 3 & 4 Vict. c. 96, s. 41.

[4] 96 Com. J. 159; 104 Ib. 154; 105 Ib. 160; 109 Ib. 160; 111 Ib. 102.

[5] 93 Ib. 236; 100 Ib. 335; 103 Ib. 633; 116 Ib. 364 (as containing libellous charges against a member of the house and other parties).

[6] 95 Ib. 193; 122 Ib. 345.

[7] 117 Hans. Deb. 3rd Ser. 399.

separately. On the 1st May 1868, it was ordered "that the name of the lord presenting a petition shall be entered thereon."[1] It was ordered by the Lords, 30th May 1685, "That any lord who presents a petition, shall open it before it be read."[2] At the same time the lord may comment upon the petition, and upon the general matters to which it refers; and there is no rule or order of the house that limits the duration of the debate on receiving a petition: but it is usual for a lord who intends to speak upon a petition, to give notice of its presentation. When the petition has been laid upon the table, an entry of that fact is made in the Lords' Minutes, and appears afterwards in the Journals, with the prayer of the petition, amidst the other proceedings of the house: but the nature of its contents is rarely to be collected from the entry; and in very few cases indeed have petitions been printed at length in the Journals, unless they related to proceedings partaking of a judicial character.[3] But on the 2nd April 1868, a select committee was appointed in the House of Lords, to direct the printing, for the use of the house, of such petitions as they shall think fit,[4] and it is now contrary to the practice of the house to move that a petition be printed.

Lords.

It is to the representatives of the people that petitions are chiefly addressed, and to them they are sent in such numbers, that it is absolutely necessary to impose some restrictions upon the discussion of their merits. Formerly, the practice of presenting petitions had been generally similar to that of the House of Lords: but the number had so much increased,[5] and the other business of the house was liable to so many

Petitions to the Commons.

[1] 100 Lords' J. 138.

[2] 14 Ib. 22.

[3] 74 Ib. 236.

[4] 100 Ib. 103.

[5] In the five years ending 1832, 23,283 public petitions were presented to the House of Commons; in the five years ending 1842, 70,072; in the five years ending 1852, 62,248; in the five years ending 1862, 63,003; in the five years ending 1867, 53,305; in the five years ending 1872, 101,573; in the five years ending 1877, 91,846; and in the five years ending 1882, 72,850. Since 1833, 702,819 public petitions have been presented to the house.

interruptions and delays, from the debates which arose on receiving petitions, that after vain attempts to reconcile the opposing claims of petitions and of legislation, upon the time of the house,[1] the following Standing Orders were adopted in 1842 and 1853 :—

Petitions to be opened by members.

"That every member offering to present a petition to the house, not being a petition for a private bill, or relating to a private bill before the house, do confine himself to a statement of the parties from whom it comes, of the number of signatures attached to it, and of the material allegations contained in it, and to the reading of the prayer of such petition."

May be read by the clerk.

"That every such petition, not containing matter in breach of the privileges of this house, and which, according to the rules or usual practice of this house, can be received, be brought to the table by the direction of the Speaker, who shall not allow any debate, or any member to speak upon, or in relation to, such petition, but it may be read by the clerk at the table if required."[2]

Urgent cases discussed.

"That in the case of such petition complaining of some present personal grievance, for which there may be an urgent necessity for providing an immediate remedy, the matter contained in such petition may be brought into discussion, on the presentation thereof."

Petitions referred to committee on public petitions; and in certain cases ordered to be printed.

"That all other such petitions, after they shall have been ordered to lie on the table, be referred to the committee on public petitions, without any question being put: but if any such petition relate to any matter or subject, with respect to which the member presenting it has given notice of a motion, and the said petition has not been ordered to be printed by the committee, such member may, after notice given, move that such petition be printed with the Votes."

May oppose taxes for the service of the year.

"That subject to the above regulations, petitions against any resolution or bill imposing a tax or duty for the current service of the year, be henceforth received, and the usage under which the house has refused to entertain such petitions be discontinued."[3]

While a member may state the purport and material allegations of a petition, he is not at liberty to read the whole or greater part of the petition itself: but if he desires that the

[1] For the two sessions, 1833 and 1834, morning sittings from twelve to three were devoted to petitions and private bills, but they were not found to be effectual.

[2] On the 11th April 1845, a debate arose on the presentation of a petition from the Dublin Protestant Operative Association, but it related to matters of order, which, of course, may be debated at any time.

[3] 97 Com. J. 191. And see also 88 Ib. 10. 95; 94 Ib. 16.

petition should be read, the proper course is to require it to be formally read by the clerk, at the table.[1]

Cases ruled to be urgent.

On the 14th June 1844, it was ruled, by Mr. Speaker, that a petition of parties complaining of their letters having been detained and opened by the Post-office, and praying for inquiry, was not of that urgency that entitled it to immediate discussion, especially as notice of its presentation had been given on the previous day, which proved that the matter was such as admitted of delay:[2] but on the 24th June 1844, a similar petition, of which no previous notice had been given, was permitted to open a debate. In the latter case, however, the complaint was, that "letters *are* secretly detained and opened;" and thus a "present personal grievance" was alleged, while in the former case a past grievance only had been complained of.[3] On the 5th July 1855, a petition complaining of the recent misconduct of the police in Hyde Park, and of injuries personally sustained by the petitioners, was held not to justify a debate, as the grievance complained of did not demand an immediate remedy.[4] Neither, under cover of a motion for the adjournment of the house, will a member be permitted to bring under discussion the contents of a petition which he would be restrained by the Standing Order from debating:[5] but a personal explanation has been permitted without any question being before the house, upon matters affecting a member, which have been alluded to in a petition.[6]

Debates upon petitions.

It will be observed that, by the Standing Order, the restriction on debate does not extend to any urgent cases. Neither does it extend to a petition complaining of a matter affecting the privileges of the house, such a case being governed by the general rule, that a question of privilege is always entitled to immediate consideration.[7] But the more

[1] 79 Hans. Deb. 3rd Ser. 496; 106 Ib. 300.

[2] 75 Ib. 894; 99 Com. J. 398.

[3] 75 Hans. Deb. 3rd Ser. 1264.

[4] 139 Ib. 453.

[5] 7th July 1856 (Attorney-General and the Bedford Charities).

[6] 48 Hans. Deb. 3rd Ser. 226; 109 Ib. 235; and 7th July 1856.

[7] 104 Com. J. 302; 105 Ib. 110;

usual and convenient course, when the matter does not require the immediate interposition of the authority of the house, is to order it to be taken into consideration on a future day, and to be printed for the information of the house.[1] It must always be borne in mind that the discussion of a petition is not, in itself, introductory to legislative measures; and that every resolution or bill must commence with a distinct motion, in proposing which a member is at liberty to enforce the claims of all petitioners who have submitted their cases to the house.

Petitions printed with the Votes.

A motion for printing a petition with the Votes, if unopposed, is usually permitted to be made early in the evening, at the time of presenting public petitions, or moving for unopposed returns. It is not a matter of right, but is open to debate and objection like any other motion.[2] On the 15th April 1845, it was objected that a motion intended to be made by a member was not such as could be properly founded upon a petition proposed to be printed; and the motion for printing it was withdrawn.[3]

Committee on public petitions.

It has been seen that, in certain cases, petitions may be printed and distributed with the Votes; and in some few instances, petitions presented in a former session have been ordered to be so printed;[4] but the general practice is, for all public petitions to be referred to the "Committee on Public Petitions," under whose directions they are classified, analysed, and, when necessary, printed at length.[5] The reports of this committee are printed twice a week, and point out, under classified heads, not only the name of each petition, but the number of signatures, the general object of every petition, and the total number of petitions and the

112 Ib. 231; 113 Ib. 68; 114 Ib. 357. 146 Hans. Deb. 3rd Ser. 97; 168 Ib. 1855. Royal Atlantic Steam Company, July 19th 1861; 164 Ib. 1178.

[1] 86 Hans. Deb. 3rd Ser. 328; Lisburn Election, 18th April 1864; 119 Com. J. 173.

[2] Southampton writ, 1st June 1842; 97 Com. J. 329. 63 Hans. Deb. 3rd Ser. 1057.

[3] 79 Hans. Deb. 3rd Ser. 686.

[4] 102 Ib. 22. 203; 112 Ib. 155; Mr. Repton's petition, 1858; 113 Ib. 331.

[5] 88 Com. J. 95.

signatures to which addresses are affixed,[1] in reference to each subject; and whenever the peculiar arguments and facts, or general importance, of a petition require it, it is printed at full length in the Appendix, where it is accessible to the public, at the cheapest rate of purchase. In some cases petitions have been ordered to be printed with the Votes, with the signatures attached thereto,[2] and in others for the use of members only.[3] A petition has been ordered to be printed for the use of members only, with the names of the persons who had signed it.[4] Sometimes petitions which have been already printed, have been ordered to be reprinted.[5]

Time and mode of presenting petitions.

A few words may now be added in reference to the time and mode of presenting petitions in the House of Commons. It was resolved, 20th March 1833, "That every member presenting a petition to the house, do affix his name at the beginning thereof;"[6] and it is always printed with the petition, in the reports of the committee. On the 9th May 1844, an instruction was given to this committee not to record any petition on which the name of the member presenting it is not written.[7] On the 6th April 1876, notice being taken that a member's name had been affixed to a petition without his authority, the petition was ordered to be withdrawn;[8] and it has been ruled that the member's name should be signed by his own hand, and that it is irregular to authorise another person to affix it.[9] The time for receiving petitions is at the conclusion of the private business; and members having petitions entrusted to them, should write

[1] With a view to correct abuses in the preparation of petitions, the Public Petitions Committee recommended, in 1878, that they should only report signatures to which addresses are affixed; Special Report, 11th April 1878; and an instruction was given accordingly, 133 Com. J. 205.

[2] 97 Com. J. 302; 98 Ib. 396. 460. 549; 101 Ib. 142.

[3] 100 Ib. 538. 648; 101 Ib. 1021; 105 Ib. 45; 106 Ib. 209; 116 Ib. 377.

[4] 97 Ib. 57.

[5] 98 Ib. 216; 103 Ib. 30.

[6] 98 Ib. 190. 74 Hans. Deb. 3rd Ser. 714.

[7] 99 Com. J. 284.

[8] 131 Ib. 141. 228 Hans. Deb. 3rd Ser. 1320.

[9] 229 Ib. 586.

their names on a numbered list, headed "Public Petitions," at the table of the house, from which they will be called by the Speaker in their order. When all the names on the list have been called, any member may afterwards present a petition, who rises in his place for that purpose when there is no business before the house;[1] but no petition is received after five o'clock. When petitions relate to any bill, or the subject-matter of any motion appointed for consideration, a member may present them before the debate commences, at any time during the sitting of the house. In the case of a bill, they can only be offered immediately after the order of the day has been read, and before any question has been proposed. On one occasion, however, a motion for the Speaker to leave the chair, was withdrawn, in order to enable a member to present a petition, and was repeated as soon as the petition had been received.[2] When a petition has been laid upon the table, it is irregular for any member to remove it.[3]

[1] Speaker's ruling, 19th March 1868; 190 Hans. Deb. 3rd Ser. 1893.

[2] 10th April 1856, Education; 111 Com. J. 131.

[3] 105 Ib. 99.

CHAPTER XX.

ACCOUNTS, PAPERS, AND RECORDS PRESENTED TO PARLIAMENT: PRINTING AND DISTRIBUTION OF THEM: ARRANGEMENT AND STATISTICAL VALUE OF PARLIAMENTARY RETURNS.

Returns by order and by address.

PARLIAMENT, in the exercise of its various functions, is invested with the power of ordering all documents to be laid before it, which are necessary for its information. Each house enjoys this authority separately, but not in all cases independently of the Crown. Accounts and papers relating to trade, finance, and general or local matters, are ordered directly, and are returned in obedience to the order of the house whence it was issued: but returns of matters connected with the exercise of royal prerogative, are obtained by means of addresses to the Crown.

The distinction between these two classes of returns should always be borne in mind; as, on the one hand, it is irregular to order directly that which should be sought for by address; and, on the other, it is a compromise of the authority of Parliament to resort to the Crown for information, which it can obtain by its own order. The application of the principle is not always clear: but, as a general rule, it may be stated that all public departments connected with the collection or management of the revenue, or which are under the control of the Treasury, or are constituted or regulated by statute, may be reached by a direct order from either house of Parliament: but that public officers and departments, subject to her Majesty's secretaries of state, or the privy council, are to receive their orders from the Crown.

Thus, returns from the Commissioners of Customs and of Inland Revenue, the Post-office, the Board of Trade, and the Treasury, are obtained by order. These include every

account that can be rendered of the revenue and expenditure of the country; of commerce and navigation; of salaries and pensions; of general statistics: and of facts connected with the administration of all the revenue departments. Addresses are presented for treaties with foreign powers, for despatches to and from the governors of colonies, and for returns connected with the army, the civil government, and the administration of justice. Where returns relate to the expenditure of public money upon any Crown property, they are obtained by order, and not by address.[1]

When returns to addresses have not been made.

When an address for papers has been presented to the Crown, the parties who are to make them appear to be within the immediate reach of an order of the house; as orders of the House of Commons for addresses have been read, and certain persons who had not made the returns required, have been ordered to make them to the house forthwith.[2] In other cases, however, further addresses have been moved, praying her Majesty to give directions that papers be laid before the house forthwith.[3]

Orders discharged.

When it is discovered that an address has been ordered for papers which should properly have been presented to the house by order, it is usual to discharge the order for the address, and to order the papers to be laid before the house.[4] In the same manner, when a return has been ordered, for which an address ought to have been moved, the order is discharged, and an address is presented instead.[5] Where the order for a return is found not to comprise all the particulars desired, it is usual to discharge the order, and make another in a corrected form. Some-

[1] Windsor Castle and Buckingham Palace, 19th April 1826; Greenwich Park, 3rd June 1850; Marble Arch, 18th March 1852; Richmond Park, 12th June 1854; Metropolitan Parks, 28th July 1854; St. James's Park, 21st April 1856, and 20th May 1857. In the latter case the right of the house to order such a return having been questioned, was conclusively established.

[2] 90 Com. J. 413. 650; 95 Ib. 448.

[3] 95 Ib. 220; 102 Ib. 692; 120 Ib. 70.

[4] 92 Ib. 580, &c.

[5] Ib. 365; 104 Ib. 623, &c.

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times, however, without discharging the order, public papers or other particulars have been ordered to be added to the return.[1] And so much of an order as relates to certain portions of the return has been discharged.[2] Orders of a former session relating to papers are also amended, or otherwise dealt with, as circumstances may require.

Returns relating to the other house.

If one house desires any return relating to the business or proceedings of the other, neither courtesy nor custom allows such a return to be ordered: but an arrangement is generally made, by which the return is moved for in the other house; and after it has been presented, a message is sent to request that it may be communicated.[3] Or a message is sent requesting that a return of certain matters may be communicated; and such return is prepared and communicated accordingly.[4] But it is not usual to send a message for a return which has been obtained from other departments, by order or address. For such a return it is more regular to move in the usual manner.[5]

Subjects of returns.

Returns may be moved for, either by order or address, relating to any public matter, in which the house or the Crown has jurisdiction. They may be obtained from all public offices, and from corporations, bodies, or officers constituted for public purposes, by Acts of Parliament or otherwise: but not from private associations, such as Lloyd's for example,[6] nor from individuals not exercising public functions. The papers and correspondence sought from government departments should be of a public and official character, and not private or confidential. The opinions of the law officers of the Crown, given for the guidance of ministers, in any question of diplomacy or state policy, being

[1] 110 Com. J. 56. 230; 116 Ib. 99; 117 Ib. 337; 121 Ib. 143.

[2] 126 Ib. 89.

[3] 111 Ib. 250. 270. 294. In 1856 a notice had been given of a return of fees on private bills in both houses, but on an intimation from the Speaker, the return was confined to the House of Commons. 111 Com. J. 120.

[4] 123 Com. J. 212; 127 Ib. 141.

[5] Ib. 396. 408.

[6] 11 Hans. Deb. 271.

included in the latter class, have generally been withheld from Parliament. In 1858, however, this rule was, under peculiar and exceptional circumstances, departed from, and the opinions of the law officers of the Crown, in regard to the case of the Cagliari, were laid before Parliament.[1] In 1871, in the select committee on the Thames Embankment, a case submitted to the law officers being required, it was objected that the production of such a document was unusual: but as it appeared that their opinion upon the case had already been laid before the house, the objection was withdrawn, and the case was produced before the committee.[2]

But however ample the power of each house to enforce the production of papers, a sufficient cause must be shown for the exercise of that power; and if considerations of public policy can be urged against a motion for papers, it is either withdrawn, or otherwise dealt with according to the judgment of the house.

Returns not made.

If parties neglect to make returns in reasonable time, they are ordered to make them forthwith:[3] or so much of returns as has not been made.[4] If they continue to withhold them, they are ordered to attend at the bar of the house;[5] and unless they satisfactorily explain the causes of their neglect, and comply with the order of the house, they will be censured or punished according to the circumstances of the case.[6] A person has been reprimanded by the Lords for having made a return to an order, which he was not required or authorised to make, and for framing it in a form calculated to mislead the house.[7]

Amendment of returns.

Sometimes further particulars are ordered to be added to returns,[8] or to be separately stated:[9] or returns are ordered to be amended.[10]

[1] 149 Hans. Deb. 3rd Ser. 178.

[2] Minutes of the Committee, pp. iv.–vi.

[3] 90 Com. J. 413; 114 Ib. 371; 119 Ib. 291; 121 Ib. 143.

[4] 131 Ib. 354.

[5] 75 Ib. 404; 89 Ib. 386; 96 Ib. 363.

[6] 90 Ib. 575. 81 Lords' J. 134.

[7] 82 Lords' J. 89.

[8] 123 Com. J. 69; 127 Ib. 277.

[9] 127 Ib. 277.

[10] 123 Ib. 178 (by address); 122 Ib. 322.

When Parliament is prorogued before a return is presented, the ordinary practice is to renew the order in the ensuing session, as if no order had previously been given. This practice arises from the general effect of a prorogation, in putting an end to every proceeding pending in Parliament; and unquestionably an order for returns loses its effect at a prorogation; yet returns are frequently presented by virtue of addresses in a preceding session, without any renewal of the address,[1] and occasionally in compliance with an order of a former session.[2] Orders have also been made which assume that an order has force from one session to another. For example, returns have been ordered "to be prepared in order to be laid before the house in the next session;"[3] and orders of a former session have been read, and the papers ordered to be laid before the house forthwith.[4] And the order for an address made by a former Parliament has been read, and the house being informed that certain persons had not made the return, they were ordered forthwith to make a return to the house.[5]

Effect of a prorogation.

Besides the modes of obtaining papers by order and by address, both houses of Parliament are constantly put in possession of documents by command of her Majesty, and in compliance with Acts of Parliament.

Papers presented by command, and by Act.

Judgment rolls, exhibits, and certified copies of documents relating to appeals, are delivered in at the bar of the House of Lords, upon oath. Other papers and returns were formerly delivered at the bar, upon oath, in the same manner: but now they are either presented by a minister of the Crown, or are forwarded by the department to the clerk of the Parliaments, for presentation. In the Commons, when a minister of the Crown has any papers of special importance to present, he goes to the bar, and, on being called by

Forms observed in presenting papers.

[1] 98 Com. J. 428; 103 Ib. 579. 775; 104 Ib. 239. 284, &c.; 106 Ib. 5; 108 Ib. 209.

[2] 99 Ib. 301; 103 Ib. 131; 104 Ib. 35. 88. 133, &c.; 106 Ib. 24; 108 Ib. 293; 129 Ib. 7; 135 Ib. 126, &c.

[3] 78 Ib. 472; 80 Ib. 631.

[4] 78 Ib. 72; 114 Ib. 371.

[5] 90 Ib. 413.

the Speaker, he brings them up;[1] and they are ordered to lie upon the table: but the more usual practice is to deliver them to the clerk, at the table. When such papers are brought up, they are generally ordered to lie upon the table, as a matter of course: but upon the question that they do lie upon the table, a debate has, on some rare occasions, arisen. On the 8th July 1857, Sir G. Lewis made a statement in moving that an estimate of the cost of the Persian war, presented by him, be referred to the committee of supply.[2] On the 13th February 1862, on bringing up the revised code on education, Mr. Lowe made a statement, though not without objection.[3] On the 5th May 1865, Mr. Bruce, in bringing up the minutes of the Committee of Privy Council for Education, was proceeding to explain them (having intimated his intention on the previous day), but this course being objected to as leading to a debate, under inconvenient conditions, and in anticipation of the business appointed for the day, he postponed his statement to another occasion.[4] Again on the 10th February 1873, Mr. Secretary Bruce, in presenting new rules for the regulation of the Royal Parks, proposed to speak upon the motion that "the rules do lie upon the table." Being interrupted, he limited himself to the reading of the new rules: but a debate was raised upon the question, the regularity of which was explained from the chair.[5] In the Lords, if the paper relate to judicial proceedings, the person is called to the bar, sworn, and examined respecting it; but if it be an ordinary paper, he is called in, delivers the paper at the bar, and is directed to withdraw. In the Commons, when it was the custom to present papers in this manner, the person, by direction of the Speaker, was introduced at the bar by the serjeant with the mace, delivered the paper to the clerk of the house, and was directed by the Speaker to withdraw: but on the 7th April 1851, it was

[1] By usage, such papers are only to be presented by privy councillors.

[2] 146 Hans. Deb. 3rd Ser. 1132.

[3] 165 Ib. 191.

[4] 178 Ib. 3rd Ser. 1535.

[5] 214 Ib. 199.

ordered, "That accounts and other papers which shall be required to be laid before this house by any Act of Parliament, or by any order of the house, may be deposited in the office of the clerk of this house, and the same shall be laid on the table, and a list of such accounts and papers read by the clerk."[1] And this more convenient practice has superseded the former mode of presenting papers from the various public offices. Sometimes a minister moves for a return from his own department, without notice, and immediately presents it, in compliance with the order which has just been made.

"Dummies."

Occasionally blank papers, familiarly known as "dummies," are presented, instead of the real documents. This practice is irregular, and without recognition: but is favoured by convenience, and the exigencies of public business. When resorted to with a view to expedition in printing and distribution, it may be a useful expedient: but if used as a colourable compliance with an order of the house, or as a means of delay, it is obviously open to grave objections. To correct abuses of this kind, it was ordered, on the 20th March 1871, that all papers are to "be laid upon the table in such a form as to ensure a speedy delivery thereof to members;"[2] and this order was communicated to the several public departments.

Papers to lie upon the table.

When accounts and papers are presented, they are ordered to lie upon the table; and, when necessary, are ordered to be printed, or are referred to committees, or abstracts are ordered to be made and printed.[3] Sometimes papers of a former session are ordered to be printed, or re-printed.

Printing committee in the Commons.

In the Commons, a select committee is appointed at the commencement of each session, "to assist Mr. Speaker in all matters which relate to the printing executed by order of the house; and for the purpose of selecting and arranging for printing, returns and papers presented in pursuance of motions made by members. To this committee all papers are referred, and

[1] 106 Com. J. 150. This list is not read, but is entered in the Votes.

[2] 126 Ib. 96.

[3] On the 17th Nov. 1852, a report was ordered to be printed and delivered forthwith: 108 Com. J. 29.

it is the usual practice for the house not to order papers to be printed until they have been examined by the committee. No distinct reference or report is made: but when papers are laid upon the table, they are, from time to time, submitted to the committee or the Speaker, by whom it is determined whether orders shall be made for printing them in their present form, or for preparing abstracts.

Unprinted papers.

Papers, if not considered worthy of being printed, or if the members who moved for them do not urge the printing, are open to the inspection of members in an unprinted form; being deposited for that purpose in the library. In some cases papers of a local or private character have been ordered to be printed at the expense of the parties, if they think fit.[1] In other cases they have been ordered to be returned to a public department.[2] Sometimes part of a return only has been ordered to be printed.[3] The orders of a former session that a return do lie upon the table, and be printed, have been discharged.[4]

Certain orders and regulations laid before Parliament.

Numerous administrative orders and regulations relating to prisons, education, charities, endowed schools, and other matters are presented to both houses, in pursuance of Acts of Parliament, which come into operation, unless disapproved of by either house, within a certain number of days; and, unless it be otherwise provided by statute, this period will be comprised in the same session,—a prorogation or dissolution being conclusive of any proceeding or business pending at the time.[5]

Distribution of papers.

Lords.

All papers printed by order of the Lords are, by courtesy, distributed gratuitously to members of the House of Commons who apply for them; and also to other persons, on application, with orders from peers. They are also accessible to

Commons.

the public by sale. The Commons have more fully applied the principle of sale, as the best mode of distribution to the

[1] 101 Com. J. 990; 113 Ib. 42. 363; 115 Ib. 505; 116 Ib. 125.

[2] 100 Ib. 880; 125 Ib. 80.

[3] 124 Ib. 209; 125 Ib. 70.

[4] 7th February 1873; 134 Com. J. 18; 135 Ib. 235.

[5] See also *infra*, p. 766.

public. Each member receives a copy of every paper printed by the house, but is not entitled to more, without obtaining an order from the Speaker. Certain reports and papers, however, of limited interest, are not distributed to members, but may be obtained on application. The chairman of a committee, the member who has brought in a bill, and others, may obtain a greater number of copies for special purposes: but no general distribution can be obtained, except by purchase. The rule is not strictly enforced, as regards bills and estimates before the house, which may generally be obtained by members, on application at the Vote-office; but more than one copy of reports and papers is not delivered, without authority from the Speaker.

Delivery to members by the Vote-office.

The Vote-office is charged with the delivery of printed papers to members of the house; and those who wish to receive them regularly should take care to leave their addresses, in order that all papers may be forwarded to them, either during the session, or in the recess. Papers in which any libellous matter is detected by the printing committee, are occasionally ordered to be printed "for the use of members only," and the distribution of these is confined to members, and delivered by the Vote-office alone. The papers ordered to be printed generally, are accessible to the public in the several "offices for the sale of parliamentary papers," established under the custody of the Stationery-office.[1] They are sold at a halfpenny per sheet, a price sufficient to raise them above the quality of waste paper; and moderate enough to secure the distribution of them to all persons who may be interested in their contents.[2]

Transmission by post.

To facilitate the distribution of parliamentary papers, they are entitled to be sent through the Post-office, to all places in the United Kingdom, at a rate of postage not exceeding one half-penny for every two ounces in weight, whether prepaid or

[1] Resolutions of the house, 25th March 1882; 37 Com. J. 120.

[2] See Reports of Printed Papers Committee, 1835 (61. 392). 90 Com. J. 544.

not, provided they be sent without a cover, or with a cover open at the sides, and without any writing or marks upon them.[1] The members of both houses are also entitled, during a session, to send, free of postage, all Acts of Parliament, bills, minutes, and votes, by writing their names upon covers provided for that purpose, in the proper offices.

Arrangement of parliamentary papers.

By these various regulations, the papers laid before Parliament are effectually published and distributed. In both houses they are systematically arranged in volumes, at the end of each session, with contents and indexes, to secure a uniform classification, and convenient reference. General indexes have also been published, by means of which the papers that have been printed during many years may readily be discovered.[2] Each paper is distinguished by a sessional number at the foot of the page, by the date at which the order for printing is made, and by the name of the member who moved for it; except in cases where papers are presented, by command of her Majesty, in a printed form.

Their statistical character.

The collected papers of the two houses contain an extraordinary amount of information, in all departments of legislative inquiry; in law, history, the privileges of Parliament, negotiations with foreign powers, and every variety of statistics. The statistical returns have been moved for at different times, for particular objects, and do not present so regular and complete a series as could be desired. Sometimes a return has been presented for several years in succession, when the series is interrupted, and commences again at a later period. At other times, the returns for succeeding years, though similar in object, were not moved for or prepared in a uniform manner. One return, for example, is found to include the United Kingdom, while another extends to Great Britain only; one shows the gross, another the net

[1] 3 & 4 Vict. c. 96; Post Office Regulations.

[2] There are General Indexes to the Lords' Papers, from 1801 to 1859; and from 1859 to 1870; and in the Commons there are General Indexes, from 1801 to 1859; and from 1852 to 1869; and from 1870 to 1879.

revenue; one dates from the 1st January, another from the 5th April; one calculates the value of exports by the official rate of valuation, another by the declared or real value. By discrepancies of this nature, the statistical importance of the earlier parliamentary papers has been very much impaired.

Tables of revenue, &c.

To secure a more complete and uniform collection of statistics, the statistical department of the Board of Trade was established some years since. Accounts of the revenue, commerce, and navigation of the country are there collected from every department, and annually laid before Parliament. The tables prepared by this department have greatly improved the statistics of the last fifty years; and other parliamentary papers have also been moved for, and continued with considerable care.

Improvement of statistical returns.

The causes of imperfection in the statistical accounts have been:—1. The irregular manner in which they have been moved for, without any settled plan or principle; 2. The imperfect mode of preparing the orders; 3. The want of proper forms and instructions addressed to those who are to prepare the returns; 4. The absence of control and superintendence in editing the returns before they were printed. With a view to improve the character of parliamentary returns, a plan was proposed by the printing committee in 1841,[1] and has since been partly carried into effect; the gradual operation of which could not fail to be attended with benefit. The committee suggested:

1. "That every member be recommended, before he gives notice of a motion for a return, to consult the librarian of the House of Commons."

2. "That after the order for a return has been made by the house, the librarian do prepare, when necessary, a form, to be submitted to Mr. Speaker for his approval; and that such form shall be forwarded with the order in the usual manner."

3. "That before any return which has been presented to the house shall be ordered to be printed, it shall be inspected by the librarian, and approved by Mr. Speaker."

[1] Parl. Paper, 1841 (181).

Orders for returns.

And these recommendations have since been repeated, by the printing committee, with a view to a reduction of the expense of printing.[1] By attending to the first of these suggestions, a member will generally obtain assistance in framing a motion for returns. Documents of a similar character can be consulted, and their merits or defects, in form and matter, will serve as guides to further investigation. The preparation of the order, also, frequently requires a practical acquaintance with the forms and character of parliamentary accounts, in order to secure the information desired.

Blank forms.

The object in preparing blank forms to accompany the orders of the house, is to ensure complete and uniform answers from the parties to whom they are addressed. An order of considerable length, and containing various queries, has often been forwarded to a great number of persons, in all parts of the country. Each person is thus left to his own interpretation of the order, and is at liberty to return his answers in whatever form he pleases. When all the answers are afterwards collected, they are found to be so different both in form and matter, that they are almost useless for purposes of comparison, and cannot be reduced, with the greatest pains, into a consistent and uniform return. A blank form, with columns properly headed, interprets the order, and obtains the answers in such a shape, that, if properly given, they are ready for printing; and if not, any imperfection can be readily detected.

Abstracts.

When this precaution has been neglected, an attempt is still made by means of abstracts, to improve the form in which returns are originally presented. They are compressed into the best form of which they will admit, and when practicable, general results are deduced from them, in illustration of the purposes of the order.

[1] Report, 17th March 1857 (122).

CHAPTER XXI.

PROGRESSIVE INFLUENCE OF THE COMMONS IN GRANTING SUPPLIES, AND IMPOSING BURTHENS UPON THE PEOPLE. EXCLUSION OF THE LORDS FROM THE RIGHT OF AMENDING MONEY BILLS. CONSTITUTIONAL FUNCTIONS OF THE CROWN AND OF THE COMMONS, IN MATTERS OF SUPPLY. MODERN RULES AND PRACTICE IN VOTING MONEY, AND IMPOSING PECUNIARY BURTHENS. COMMITTEES OF SUPPLY AND WAYS AND MEANS.

Feudal origin of parliamentary taxation.

In England, as in many other countries of Europe, the origin of taxation may be referred to the feudal aids and services, due from the tenants of the Crown to their feudal superior. Before the growth of commerce, the royal revenue could only be derived from land; and after the Conquest the entire soil of England was placed under the feudal sovereignty of the Conqueror. The greater portion was held by military service, and the councils of William being composed of the tenants-in-chief of the Crown,[1] granted and confirmed, as a Parliament, the aids and services to which the king, as their feudal superior, was entitled. This connexion between feudal rights and legislative taxation is singularly illustrated by the charter of William the Conqueror,[2] which declared that all freehold tenants by military service,[3] should "hold their lands and possessions free from all unjust exactions, and from all tallage,[4] so that nothing be exacted or taken from them except their free service, which had been given and conceded to him for ever, of hereditary right, by the common council of his realm." In

[1] See *supra*, p. 17.

[2] Fœdera, I. (Record Comm. ed.)

[3] "Liberi homines." See explanations of this term, Rep. on Dignity of the Peerage, p. 31.

[4] Tallage was raised upon the demesne lands of the Crown, upon the burghs and towns of the realm, and upon escheats and wardships. 1 Madox, Hist. of the Exchequer, 694.

the words of this charter, two remarkable points may be observed; first, that the claims of the Crown upon those classes who formed its councils were confined to feudal aids and services; and, secondly, that even these had been freely given by the common council of the realm, or Parliament.

At the same time, the Crown was entitled to other sources of revenue from classes who did not hold lands by military service, and who had no place in the national councils, either personally or by representation: but the various claims of the Crown gradually became less determined, and required repeated assessments: for which purpose the council or Parliament was convened; and by the Great Charter of King John, the archbishops, bishops, abbots, earls, greater barons, and all other tenants-in-chief of the Crown, were to be summoned, with forty days' notice, to assess aids and scutages,[1] which the king bound himself not to impose otherwise than by the common council of his realm. The strictly feudal nature of these impositions was exemplified by the reservations which were made in favour of the king's right to aids for the ransom of his person, on making his eldest son a knight, and on the marriage of his eldest daughter: but the practice first noticed in this charter, of summoning the tenants-in-chief of the Crown through the sheriffs, and bailiffs, led to the principle of representation, as was shown in the first chapter of this work,[2] and had an important influence upon the revenue of future kings.

Growth of the Commons' right of supply.

After the property in land had undergone many changes and subdivisions, and the commonalty had grown in numbers and wealth, the taxation became less feudal in its character. On the one hand, the tenants of the Crown had contrived to defraud their superior of many of his lawful dues; and, on the other, the kings had been improvident; and while their feudal revenues were diminished in amount, and confused in

[1] For a full explanation of the nature of these feudal sources of revenue, see Madox, chapters 15 and 16. See also *supra*, p. 18.

[2] *Supra*, pp. 18 *et seq.*

title, their necessities were continually increasing. The Commons, in the meantime, had assumed their place as an estate of the realm in Parliament, and represented wealthy communities. These changes are marked by the well-known statute, *De tallagio non concedendo*, in the 25th Edward I., by which it was declared, "That no tallage or aid shall be taken or levied without the goodwill and assent of the archbishops, bishops, earls, barons, *knights, burgesses, and other freemen of the land.*" The popular voice being thus admitted in matters of taxation, the laity were henceforth taxed by the votes of their representatives in Parliament. The lords spiritual and the lords temporal voted separate subsidies for themselves; and from the reign of Edward I. the clergy, as a body, granted subsidies, either as a national council of the clergy, in connection with the Parliament, or, at a later period, in convocation, until the surrender or disuse of their right in the reign of Charles II.[1]

Commons' right to originate grants.

At length, when the Commons had increased in political influence, and the subsidies voted by them had become the principal source of national revenue, they gradually assumed their present position in regard to taxation and supply, and included the Lords as well as themselves in their grants. So far back as 1407, it was stated by King

[1] Edward I. inserted in every bishop's writ of summons a clause (called the præmunientes clause), commanding him to bring the dean or prior and chapter of his cathedral church, the archdeacons, and the clergy of his diocese, to Parliament; thus making the bishop, as it were, an ecclesiastical sheriff, to whom the king's general precept was directed. To this mandate the archbishop objected, as he assumed to himself the sole right of assembling the clergy; but a compromise was effected by the continuance of the præmunientes clause, whereby the clergy were summoned to Parliament, while the archbishops summoned the clergy of their respective provinces, to assemble at the same time as the Parliament. Hence the origin of convocations, and of their time of meeting. See the Parliamentary Original and Rights of the Lower House of Convocation, by Bishop Atterbury, p. 7, 4to. 1702. They are still summoned to meet at the same time as the Parliament, but from 1717 until within the last few years, were not permitted to transact any business. But see Debates, 1852-53, on the Proceedings of Convocation; 123 Hans. Deb. 3rd Ser. 247. 277; 124 Ib. 978.

Henry IV., in the ordinance called "The Indempnity of the Lords and Commons," that grants were "granted by the Commons, and assented to by the Lords." That this was not a new concession to the Commons is evident from the words that follow, viz. "That the reports of all grants agreed to by the Lords and Commons, should be made in manner and form as hath hitherto been accustomed; that is to say, by the mouth of the Speaker of the House of Commons for the time being."[1]

Taxes by prerogative.

Concurrently with parliamentary taxation, other imposts were formerly levied by royal prerogative without the consent of Parliament, but none of these survived the Revolution of 1688.[2] Since that time the public revenue of the Crown has been dependent upon Parliament, and is derived either from annual grants for specific public services, or from payments already secured and appropriated by Acts of Parliament, and which are commonly known as charges upon the consolidated fund.

Recognition of the exclusive right of the Commons.

In modern times, her Majesty's speech, at the commencement of each session, recognizes the peculiar privilege of the Commons to grant all supplies: the preamble of every Act of Supply distinctly confirms it; and the form in which the royal assent is given is a further confirmation of their right.

Legal effect of grants.

A grant from the Commons is not effectual, in law, without the ultimate assent of the Queen and of the House of Lords. It is the practice, however, to allow the issue of public money, the application of which has been sanctioned by the House of Commons, before it has been appropriated to specific services, by the Appropriation Act, which is ordinarily reserved until the end of the session. This power is necessary for the public service, and faith is reposed in the authority of Parliament being ultimately obtained; but it is liable to be viewed with jealousy, if the ministers have not the confidence of Parliament.[3]

[1] 3 Rot. Parl. 611.

[2] Bill of Rights, Art. 4.

[3] This was shown on a remarkable occasion, not by those branches of the

Effect given to grants of the Commons before the Appropriation Act.

In order to make the grants of the Commons available, and to anticipate the legal sanction of an Appropriation Act, the Exchequer and Audit Departments Act, 1866, provides for the issue of monies, from time to time, to meet the grants of the Commons: and clauses are inserted in the acts passed at an early period of every session, for the application of money out of the consolidated fund, which authorise the bank to advance, on the application of the treasury, the sums required for the public service in respect of any services voted by the Commons in the same session.[1] This convenient arrangement has now taken the place of that formerly adopted for applying to those services the sums raised by exchequer bills.[2] By these enactments, immediate effect is given to the votes of the Commons: but there is still a constitutional irregularity in proroguing or dissolving Parliament before an Appropriation Act

legislature whose authority would be most slighted by an appropriation of money without their assent: but by the Commons themselves, who protested against the principle of giving too much validity to their own votes. In 1784, when Mr. Pitt was in a minority in the House of Commons, and it was well known that he was only waiting for the supplies, in order to dissolve the Parliament, the house resolved, "That for any person or persons in his Majesty's Treasury, or in the Exchequer, or in the Bank of England, or for any person or persons whatsoever employed in the payment of public money, to pay, or direct or cause to be paid, any sum or sums of money, for or towards the support of services voted in the present session of Parliament, after the Parliament shall have been prorogued or dissolved, if it shall be prorogued or dissolved before any Act of Parliament shall have passed appropriating the supplies to such services, will be a high crime and misdemeanour, a daring breach of a public trust, derogatory to the fundamental privileges of Parliament, and subversive of the constitution of this country." 39 Com. J. 858. These supplies were re-voted in the next session, and included in the Appropriation Act, 24 Geo. III. sess. ii. c. 44.

On the death of George III., in 1820, the Commons, in anticipation of a dissolution, voted certain temporary supplies which were not appropriated by Act of Parliament, in that session. Objections were raised to these votes in the House of Lords, as infringing upon the right of that house to assent to the grant of supplies, and they agreed to a resolution "That this house, from the state of public business, acquiesce in these resolutions, although no act may be passed to give them effect." 41 Hans. Deb. 1631–1635.

[1] 24 & 25 Vict. c. 39, ss. 13–15; 30 Vict. c. 7.

[2] See 21 Vict. c. 6; 30 Vict. c. 4; and see *infra*, p. 666.

has been passed: since by such an event, all the votes of the Commons are rendered void, and the sums require to be voted again in the next session, before a legal appropriation can be effected.[1]

Duties altered after votes of the Commons.

In the imposition and alteration of taxes, the effect given to a vote of the Commons, in anticipation of the passing of a statute, is more remarkable than in the voting of supplies. It has been customary for the government to levy the new duties, instead of the duties authorised by law, immediately the resolutions for that purpose have been reported from a committee, and agreed to by the house;[2] or from the date expressed in such resolution,[3] although legal effect cannot be given to them by statute, for some weeks, and may ultimately be withheld by Parliament. It is obvious that this custom is not strictly legal: but the ultimate decision of Parliament is anticipated by the executive government, upon its own responsibility. If the house have resolved that a duty shall be reduced on and after a particular day, a treasury order is issued, by which the officers for the collection of the revenue are directed to collect the reduced duty, from the

[1] Parliament was dissolved in April 1831, before any Appropriation Act had been passed. The new Parliament met on the 14th June, and all the grants were re-voted in the committee of supply. Before the dissolution of 1841, the supplies for six months were regularly appropriated; and prior to the dissolutions of 1857, 1859 and 1880, votes were taken on account, and appropriated.

[2] Customs Duties, 1842; Indian Corn, 1846; Sugar Duties, 1845 and 1848. In the latter instance the committee had resolved that the new duties should commence on the 5th July: but as the resolution was not reported until the 11th, it was amended on the report by substituting 10th July. Alterations were afterwards made in the scale of duties sanctioned by that resolution. Scotch and Irish Spirits, and Malt, 8th May 1854. Molasses having been omitted from the resolution of the 8th, it was proposed, on the 10th, to supply the omission by a retrospective resolution, dating the increase of duty from the 9th May: but this course being objected to was not pressed, although the revenue officers had received instructions to collect the increased duty. 132 Hans. Deb. 3rd Ser. 1486; 133 Ib. 119.

[3] Excise Duty on Spirits, and Customs Duties, 19th April 1858; 113 Com. J. 125. Chicory, 15th April 1861; 116 Com. J. 144. Tea and Sugar Duties, 24th April 1863. Sugar Duties, 15th April 1864; 119 Com. J. 170. Income Tax, 13th April 1877; 132 Ib. 153. 263.

time stated in the resolution: but before they permit the articles to be entered for consumption, they take a bond from the owners or importers, by which the latter bind themselves to pay the higher rate of duty, in case Parliament should not, eventually, sanction the reduction.[1] If, on the other hand, a duty has been increased by a resolution of the house, the revenue officers demand the increased duty, by virtue of a treasury order, and will not permit the articles to be entered for consumption until it has been paid, or security given for its payment. For these official acts there is no legal authority at the time: but when the Act is subsequently passed, it alters the duty from the day named in the resolution of the Commons, however long a time may have since elapsed; and thus the duties which have been already collected since that day, become, *ex post facto*, the duties authorised by law.[2]

Exclusion of the Lords from altering supply bills.

The legal right of the Commons to originate grants cannot be more distinctly recognised than by these various proceedings; and to this right alone their claim appears to have been confined for nearly 300 years. The Lords were not originally precluded from amending bills of supply; for there are numerous cases, in the Journals, in which Lords' amendments to such bills were agreed to: but in 1671, the Commons advanced their claim somewhat further, by resolving, *nem. con.*, "That in all aids given to the king by the Commons, the rate or tax ought not to be altered;"[3] and in 1678, their claim was urged so far as to exclude the Lords from all power of amending bills of supply. On the 3rd of July, in that year, they resolved,—

"That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons: and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants; which ought not to be changed or altered by the House of Lords."[4]

[1] 84 Hans. Deb. 3rd Ser. 783.
[2] 90 Ib. 1314 (Sugar Duties).
[3] 9 Com. J. 235.
[4] Ib. 509.

It is upon this latter resolution that all proceedings between the two houses, in matters of supply, are now founded. The principle is acquiesced in by the Lords, and, except in cases where it is difficult to determine whether a matter be strictly one of supply or not, no serious difference can well arise. The Lords rarely attempt to make any but verbal alterations, in which the sense or intention is not affected; and even in regard to these, when the Commons have accepted them, they have made special entries in their Journal, recording the character and object of the amendments, and their reasons for agreeing to them.[1] So strictly is the principle observed in all matters affecting the public revenues, that where certain payments have been directed, by a bill, to be made into and out of the consolidated fund, the Commons have refused to permit the Lords to insert a clause, providing that such payments should be made under the same regulations as were applicable by law to other similar payments.[2]

Rates and charges not to be altered by the Lords.

In bills not confined to matters of aid or taxation, but in which pecuniary burthens are imposed upon the people, the Lords may make any amendments, provided they do not alter the intention of the Commons with regard to the amount of the rate or charge, whether by increase or reduction; its duration, its mode of assessment, levy, collection, appropriation, or management; or the persons who shall pay, receive, manage, or control it;[3] or the limits within which it is proposed to be levied. As illustrative of the strictness of this exclusion, it may be mentioned that the Lords have not been permitted to make provision for the payment of salaries or compensation to officers of the Court of Chancery, out of the Suitors' Fund;[4] nor to amend a clause prescribing the order in which

[1] 75 Com. J. 251. 471; 81 Ib. 388; 92 Ib. 569; 122 Ib. 456; and see *infra*, p. 645.

[2] Naval Prize Balance Bill, 1850; 105 Com. J. 518.

[3] Baths and Washhouses Bill, 1846; 101 Ib. 1234.

[4] 53 Geo. III. c. 24. Administration of Justice Bill, 1841. Master in Chancery Bill, 1847; a clause to this effect was struck out on third reading, in the Lords.

charges on the revenues of a colony should be paid.[1] But all bills of this class must originate in the Commons: as that house will not agree to any provisions which impose a charge of any description upon the people, if sent down from the Lords, but will order the bills containing them to be laid aside.[2] Neither will they permit the Lords to insert any provisions of that nature in bills sent up from the Commons; but will disagree to the amendments, and insist in their disagreement,[3] or, according to more recent usage, will lay the bills aside at once.[4] In cases where amendments have affected charges upon the people incidentally only, and have not been made with that object, they have been agreed to.[5] So also, where a whole clause, or series of clauses, has been omitted by the Lords, which, though relating to a charge, and not admitting of amendment, yet concerned a subject separable from the general objects of the bill.[6] On the

[1] Canada Government Bill, 1840; amendment withdrawn on third reading in the Lords.

[2] See special entry, 24th July 1661, on laying aside the Westminster Paving Bill; 8 Com. J. 311. Deodands Abolition Bill, 1846; 101 Ib. 724. 1234. Railway Audit Bill, 1850; 105 Ib. 458. Metropolis Local Management Bill, 1855; 110 Ib. 458. Parochial Schoolmasters (Scotland) Bill, 1857; 112 Ib. 404.

[3] Forfeited Estates (Ireland) Bill, 1700; 13 Ib. 318. 3 Hatsell, *App.* No. 12. 105 Com. J. 518.

[4] See *supra*, pp. 521, 588.

[5] 3 Hatsell, 155. Prisoners' Removal Bill, 1849, in which the Lords made the bill perpetual, instead of being in force for three years. In the Industrial Schools Bill, 1861, the Lords struck out a limitation of the act, and thereby extended the charge; but the Commons agreed to the amendment.

[6] Coroners Bill, 1844. District Lunatic Asylums (Ireland) Bill, 1846. Courts of Common Law Bill, 1853 (stamp duty in schedule). Turnpike Trusts Arrangements Bill, 1856 (clauses relating to insolvent trusts). Poor Relief (Ireland) Bill, 1860. Prisons (Scotland) Bill, 1861 (schedule). —In this case the bill constituted prison boards, having taxing powers, and in the schedule appointed the numbers of each board, and the districts by which they were to be returned. The Lords desired to alter the constitution of the Edinburgh and Forfar boards, but being unable to make such amendments, they wholly omitted Edinburgh and Forfar from the schedule, and the Commons made amendments which met the views of the Lords. Metropolis Local Management Act Amendment Bill, 1862 (clause altering qualification of vestrymen). Corrupt Practices at Elections Bill, 1863 (clause 11, charging costs of commissions upon local rates). Drainage (Ireland) Bill, 1863, Part I., omitted, which comprised many provisions which the

30th July 1867, it was very clearly put, by Earl Grey and Viscount Eversley, that the right of the Lords to omit a clause which they were unable to amend, relating to a separate subject, was equivalent to their right to reject a bill which they could not amend without an infraction of the privileges of the Commons.[1]

Expedients to enable Lords to originate bills.

It is sometimes convenient that a bill, intended to contain provisions of this character, should be first introduced into the House of Lords; in which case, the bill is presented and printed, with all the necessary provisions for giving full effect to its object, and is considered and discussed in the House of Lords in that form. But on the third reading, any provisions which infringe upon the privileges of the Commons are struck out, and the bill having been drawn so as to be intelligible after their omission, is sent to the Commons without them. These provisions, however, are printed by the Commons in red ink, with a note that they "are proposed to be inserted in committee." According to the usual rule, they are supposed to be in blank: they form no part of the bill received formally from the House of Lords, and no privilege is violated: but the Commons are thus put in possession of a bill containing every provision which will be necessary for giving it full effect; and in committee the words printed in red ink, if approved of, are inserted.[2]

Red ink clauses.

In 1846, the Lords extended the Contagious Diseases Bill to Scotland and Ireland, but as there were rating clauses, they inserted a clause, providing that such rating powers should not be so extended. To this clause the Commons

Lords could not have amended. Inclosure (No. 2) Bill, 1867, in which the Lords omitted Elsdon, Rochester, Northumberland.

[1] Parliamentary Representation Bill (clause 7); 189 Hans. Deb. 3rd Ser. 411.

[2] Good examples of this practice are afforded by the Burial Grounds Bill, in 1853; the Police (Scotland) Bill, in 1857; the Probates, &c. Act Amendment Bill, in 1858; the Cayman Islands Government Bill, 1863; British North America Bill, 1867; and Supreme Court of Judicature Bill, 1873.

disagreed, the Lords did not insist upon their amendment, and thus the whole bill was extended to Scotland and Ireland. In 1854, an ingenious expedient was resorted to, in order to enable the Lords to commence the bill for the continuance of the Crime and Outrage (Ireland) Act. As some of the sections of that Act authorised charges upon the county cess and the consolidated fund, the bill, as passed by the Lords, continued the Act with the exception of these sections; and this exception was omitted by the Commons, and thus the entire Act was continued.

Monies to be provided by Parliament.

For some years, the Commons accepted provisions in bills from the Lords, creating charges,—not directly imposed by the bill,—but to be defrayed out of monies to be provided by Parliament: but exception being taken to such a provision in the Divorce Court Bill, on the 23rd August 1860, the Speaker stated that the practice appeared to him to be open to serious objections; and that he had already intimated that any such provisions would hereafter be objected to by himself, on behalf of the house. Such intimation, he added, had already been attended to in other cases by the Lords. Under these circumstances the privilege was not insisted upon: but all such provisions have since been printed in red ink, before the bills are sent to the Commons.[1]

Lords' amendments, when agreed to.

When any amendments of the Lords, though not strictly regular, do not appear materially to infringe the privileges of the Commons, it has been usual to agree to them with special entries in the Journal; as, that "they were only for the purpose of making the dates uniform in the bill;"[2] that "they only filled up blanks which had not been filled, with the sums which were agreed to by the house, on the report of a clause;"[3] that "they were for the purpose of rectifying clerical errors;"[4] or were merely verbal;[5] "were

[1] 115 Com. J. 500; 158 Hans. Deb. 3rd Ser. 1628. 1734. Mr. Speaker Denison's Note-Book.

[2] 80 Com. J. 579.

[3] Ib. 631.

[4] 75 Ib. 251; 79 Ib. 524; 86 Ib. 684; 112 Ib. 393; 135 Ib. 196.

[5] 122 Ib. 426; 135 Ib. 369.

in furtherance of the intention of the House of Commons;"[1] "were to make the schedule agree with the bill;"[2] "to render one clause consistent with another;"[3] "were rendered necessary by several Acts recently passed;"[4] or, "were in furtherance of the practice of Parliament."[5] In 1857, an amendment to the Valuation of Lands (Scotland) Bill was agreed to, "it appearing that the same relates to the evidence admissible in certain cases, and does not alter or otherwise affect any valuation or assessment."[6]

Tolls and charges in private bills.

In regard to private bills, however, the Commons agreed, in 1858, to an important relaxation of their privileges; and will accept "any clauses sent down from the House of Lords which refer to tolls and charges for services performed, and which are not in the nature of a tax."[7]

Pecuniary penalties and fees.

So strictly had the right of the Commons been maintained in regard to the imposition of charges upon the people, that they denied to the Lords the power of authorising the taking of fees,[8] and imposing pecuniary penalties, or of varying the mode of suing for them, or of applying them when recovered; though such provisions were necessary to give effect to the general enactments of a bill.[9] A too strict enforcement of this rule, in regard to penalties, was found to be attended with unnecessary inconvenience; and, in 1831, the Commons judiciously relaxed it;[10] and again, in 1849, they introduced a further amendment of their rules, by the adoption of the following Standing Orders:

"That with respect to any bill brought to this house from the House of Lords, or returned by the House of Lords to this house, with amendments, whereby any pecuniary penalty, forfeiture, or fee, shall be authorised, imposed, appropriated, regulated, varied, or extin-

[1] 92 Com. J. 518; 112 Ib. 389; 116 Ib. 205; 120 Ib. 449; 122 Ib. 456; 136 Ib. 453.

[2] 107 Ib. 236; 137 Ib. 389.

[3] Ib. 302; 114 Ib. 181.

[4] 92 Ib. 659; 112 Ib. 389.

[5] 90 Ib. 375; 91 Ib. 823. See also other cases of special entries. 123 Ib. 345. 362; 127 Ib. 412; 131 Ib. 412.

[6] 112 Ib. 418.

[7] 27th July 1858.

[8] 8th March 1692; 10 Com. J. 845.

[9] See *supra*, p. 521.

[10] 86 Com. J. 477.

guished, this house will not insist on its ancient and undoubted privileges, in the following cases:

"1. When the object of such pecuniary penalty or forfeiture is to secure the execution of the Act, or the punishment or prevention of offences;

"2. Where such fees are imposed in respect of benefit taken, or service rendered, under the Act, and in order to the execution of the Act, and are not made payable into the treasury or exchequer, or in aid of the public revenue, and do not form the ground of public accounting by the parties receiving the same, either in respect of deficit or surplus;

"3. When such bill shall be a private bill for a local or personal Act."[1]

And, in conformity with these more recent rules, numerous provisions have been accepted from the Lords, which, under the former usage of Parliament, would have been inadmissible.[2]

Financial inquiries by the Lords.

The principle of excluding the Lords from interference has even been pressed so far by the Commons, that when the Lords have sent messages for reports and papers relative to taxation, the Commons have evaded sending them; and it has been doubted whether members should be allowed to be examined before a committee of the House of Lords upon matters involving taxation, although in practice they have been allowed to attend.[3] But of late years, this punctilious respect for privilege has not been so jealously asserted.[4]

Tacks to bills of supply.

The constitutional power of the Commons to grant supplies, without any interference on the part of the Lords, has occasionally been abused by tacking to bills of supply enactments which, in another bill, would have been rejected by the Lords: but which, being contained in a bill that their lordships had no right to amend, must either have been

[1] 104 Com. J. 23.

[2] Court of Chancery (Duchy of Lancaster) Bill, 1850. Burial Service Bill, 1846 (burial fees). Sunday Trading Bill, 1860; 159 Hans. Deb. 3rd Ser. 539, &c.

[3] Burthens on land inquiry, 1846; Local taxation inquiry, 1850; Civil service superannuation, 1856; 111 Com. J. 380; and see 2 Lord Colchester's Diary, 152.

[4] On the 24th May 1867, the report on Metropolis local taxation was communicated to the Lords.

suffered to pass unnoticed, or have caused the rejection of a measure highly necessary for the public service. Such a proceeding invades the privileges of the Lords, no less than the interference of their lordships in matters of supply infringes the privileges of the Commons, and has been resisted by protest, by conference, and by the rejection of the bills.[1]

On the 9th December 1702, it was ordered and declared by the Lords,

"That the annexing any clause or clauses to a bill of aid or supply, the matter of which is foreign to, and different from, the matter of the said bills of aid or supply, is unparliamentary, and tends to the destruction of the constitution of this government."[2]

There have been no recent occasions on which clauses have been irregularly tacked to bills of supply, in order to extort the consent of the Lords: but, in 1807, the above Standing Order was read in the Lords, and a bill for abolishing fees in the Irish customs rejected on the third reading. In that case the clause had been inadvertently allowed to form part of the bill, and it is extremely doubful whether it was a tack within the intention of the Standing Order: as the bill was not one of supply for the current year, and the clause was not irrelevant to the other enactments of the bill.[3] And in the same year the Lords rejected the Malt Duties Bill, "on account of its containing multifarious matter;" upon which the Commons passed another bill, omitting some of the matters contained in the former bill.[4]

Rejection of money bills by the Lords.

The functions of the House of Lords, in matters of supply and taxation, being thus reduced to a simple assent or negative, it becomes necessary to examine how far the latter power may be exercised, without invading the privileges of the Commons. The legal right of the Lords, as a co-ordinate branch of the legislature, to withhold their assent from any bill whatever, to which their concurrence is desired, is un-

[1] 16 Lords' J. 369; 13 Com. J. 320.
[2] 17 Lords' J. 185; Lords' S. O. No. 47.
[3] 46 Lords' J. 342.
[4] 62 Com. J. 61; and 46 Lords' J. 32; 8 Hans. Deb. 1st Ser. 427.

questionable; and, in former times, their power of rejecting a money bill had been expressly acknowledged by the Commons:[1] but the Lords had for centuries forborne to exercise this power. They had, indeed, rejected numerous bills concerning questions of public policy, in which taxation was incidentally involved:[2] but bills exclusively relating to matters of supply and ways and means they had hitherto agreed to respect. At length, however, in 1860, the Commons determined to balance the ways and means for the service of the year, by increasing the property tax and stamp duties, and repealing the duties on paper. The increased taxation had already received the assent of Parliament, when the Lords rejected the Paper Duties Repeal Bill, and thus overruled the financial arrangements voted by the Commons. That house was naturally sensitive to this novel encroachment upon its peculiar privileges: but as the Lords had exercised a legal right, and their vote was irrevocable during that session, it was judiciously resolved, after full inquiry and consideration, to maintain the privileges of the house, not by vain remonstrances, but by an assertion of its paramount authority in the imposition and repeal of taxes, at once dignified and practical. Accordingly, on the 6th July, resolutions were agreed to, affirming,

Paper Duties Bill, 1860.

"1st. That the right of granting aids and supplies to the Crown is in the Commons alone." 2nd. That the power of the Lords to reject bills relating to taxation "was justly regarded by this house with peculiar jealousy, as affecting the right of the Commons to grant the supplies, and to provide the ways and means for the service of the year:" and 3rd. "That to guard, for the future, against an undue exercise of that power by the Lords, and to secure to the Commons their rightful control over taxation and supply, this house has in its own hands the power so to impose and remit taxes, and to frame bills of supply, that the right of the Commons as to the matter, manner, measure, and time may be maintained inviolate."[3]

[1] 3 Hatsell, 405. 422, 423; 2 May, Const. Hist. (7th edit.), 105.

[2] See report on Tax Bills, 1860.

[3] Report on Tax Bills, 1860; 115 Com. J. 360; 159 Hans. Deb. 3rd Ser. 1383. 2 May, Const. Hist. (7th edit.), 108.

The significance of these resolutions was illustrated in the next session, when the Commons, without exceeding their own powers, were able to repel the recent encroachment of the Lords, and to vindicate their own financial ascendency. They again resolved that the paper duties should be repealed; but instead of seeking the concurrence of the Lords to a separate bill for that purpose, they included the repeal of those duties in a general financial measure, for granting the property tax, the tea and sugar duties, and other ways and means, for the service of the year, which the Lords were constrained to accept.[1] The financial scheme was presented for acceptance or rejection, as a whole; and, in that form, the privileges of the Commons were secure. And the budget of each year has since been comprised in a general or composite act.

Composite tax acts.

Nor was there anything novel or unprecedented in this proceeding. In 1787, Mr. Pitt's entire budget was comprised in a single bill,[2] and during the French war, great varieties of taxes were imposed, and continued in the same acts.[3] For several years after the peace, the duties on malt, sugar, tobacco, foreign spirits, pensions and personal estates, were continued annually in a single act, until these duties were gradually made permanent.[4]

Constitutional principle of supply.

Let us now proceed to consider the constitutional principle by which other branches of the legislature are governed. The Crown, acting with the advice of its responsible ministers, being the executive power, is charged with the management of all the revenues of the state, and with all payments for the public service. The Crown, therefore, in the first instance, makes known to the Commons the pecuniary necessities of the government, and the Commons grant such aids or supplies as are required to satisfy these demands; and

[1] 24 & 25 Vict. c. 20; 162 Hans. Deb. 3rd Ser. 594; 163 Ib. 69, &c.

[2] 27 Geo. III. c. 13.

[3] 35 Geo. III. c. 1; 36 Geo. III. c. 1; 39 & 40 Geo. III. c. 3; 48 Geo. III. c. 2.

[4] The duty on malt was made perpetual in 1822, on tobacco in 1826, on offices and pensions in 1836, and on sugar in 1846.

provide, by taxes and by the appropriation of other sources of the public income, the ways and means to meet the supplies which are granted by them. Thus the Crown demands money, the Commons grant it, and the Lords assent to the grant: but the Commons do not vote money unless it be required by the Crown; nor impose or augment taxes, unless they be necessary for meeting the supplies which they have voted, or are about to vote, and for supplying general deficiencies in the revenue. The Crown has no concern in the nature or distribution of the taxes: but the foundation of all parliamentary taxation is its necessity for the public service, as declared by the Crown through its constitutional advisers.

Militia estimates.

Until 1863, however, there was a remarkable exception to this constitutional rule, in the case of the charge for the disembodied militia. The Commons there took the initiative: the estimate was prepared by a committee; and when its report was received, it was referred to the committee of supply, and the Queen's recommendation was signified. But inconveniences having arisen from this separation of the estimates for military expenditure, and from divided responsibility in the preparation of them, the house agreed on the 9th February 1863, that this practice should be discontinued; and that, in future, the militia estimates, like all other estimates for the public service, should be prepared on the responsibility of ministers of the Crown.[1]

Recommendation of the Crown.

The principle of waiting for the suggestion and authority of the Crown for the voting of public money, is not confined to the annual grants. By a Standing Order, 20th March 1866,[2] "this house will receive no petition for any sum relating to public service, or proceed upon any motion for a grant or charge upon the public revenue, whether payable out of the consolidated fund, or out of monies to be provided

[1] 169 Hans. Deb. 3rd Ser. 198.

[2] Being an amendment of the orders of the 11th December 1706, and 25th June 1852.

by Parliament, but what is recommended from the Crown."[1] And this rule is extended, by the uniform practice of the house, to any motion which, though not directly proposing a grant, or charge upon the public revenue, involves the expenditure of public money. When a petition praying for compensation, or other pecuniary aid, is duly recommended, it is either referred to a committee of inquiry,[2] or directly to the committee of supply.[3] And by a Standing Order of the 21st July 1856, "this house will not receive any petition, or proceed upon any motion for a charge upon the revenues of India, but what is recommended by the Crown."

Revenues of India.

So strictly has this principle been enforced, that the house has even refused to receive a report from a select committee, suggesting an advance of money, because it had not been recommended by the Crown. On the 15th June 1837, notice was taken that a report on the petition of Messrs. Fourdrinier "contained a recommendation for public compensation for losses incurred by the patentees, and that the same has not been recommended by the Crown:"[4] and the report was recommitted in order to remove this informality. Such an objection to a report would seem to have been premature, as no motion had been founded upon it, and none could have been made unless recommended by the Crown: but it proceeded upon the same principle as that observed in regard to petitions, and is a good example of the strictness with which the rule has been enforced. In several similar cases, committees have escaped from an infringement of the rule, by a more guarded phraseology; and, of late years, a less strict interpretation of the rule has prevailed.[5]

Reports recommended by the Crown.

On the same principle, of imposing checks upon solicitations

Petitions for compounding Crown debts.

[1] 223 Hans. Deb. 3rd Ser. 879.

[2] Captain Manby, 1823; 78 Com. J. 261. 285. Mr. McAdam, 1825; 80 Ib. 309.

[3] Mr. Burgess, 1822; 77 Ib. 448.

[4] 92 Com. J. 478.

[5] *E. g.*, Resolution of Committee on East India Finance, 1873, recommending the payment of 10,000*l.* for bringing witnesses from India. Report on Lord Cochrane's claim, 1877.

for money, and moderating the liberality of Parliament, there is a Standing Order, 25th March 1715,

"That this house will not receive any petition for compounding any sum of money owing to the Crown upon any branch of the revenue, without a certificate from the proper officer or officers annexed to the said petition, stating the debt, what prosecutions have been made for the recovery of such debt, and setting forth how much the petitioner and his security are able to satisfy thereof."[1]

Motions for grants.

In addition to the necessity of a recommendation from the Crown, prior to a vote of money, the house has interposed another obstacle to hasty and inconsiderate votes, which involve any public expenditure.

By Standing Order, 20th March 1866,[2]

"If any motion be made in the house for any aid, grant, or charge upon the public revenue, whether payable out of the consolidated fund, or out of monies to be provided by Parliament, or for any charge upon the people, the consideration and debate thereof shall not be presently entered upon, but shall be adjourned till such further day as the house shall think fit to appoint; and then it shall be referred to a committee of the whole house, before any resolution or vote of the house do pass therein."

A similar rule was made a Standing Order on the 29th March 1707, viz.,

"That this house will not proceed upon any petition, motion, or bill, for granting any money, or for releasing or compounding any sum of money owing to the Crown, but in a committee of the whole house."[3]

This order was renewed 14th April 1707, 7th February 1708, and 29th November 1710, and is constantly observed in the proceedings of the house.[4]

East India revenues.

The territories of the East India Company having been transferred to the Crown, by statute, in 1858; and it being proposed, in the following year, to raise a loan of 7,000,000*l.*, chargeable upon the revenues of India, it was held, after

[1] 18 Com. J. 23.

[2] Being an amendment of the resolution 18th February 1667, and the Standing Order, 25th June 1852.

[3] 15 Com. J. 367.

[4] 15 Ib. 385; 16 Ib. 94. 405.

much consideration, that the Queen's recommendation should be signified, and the bill founded upon the resolution of a committee of the whole house.[1] By the Government of India Act, 1858, the revenues of India not being applicable to expeditions beyond the frontiers without the consent of both Houses of Parliament,[2] it was proposed, in 1867, to employ Indian troops in the Abyssinian war, and to continue the charge of their ordinary pay upon the Indian revenues: but with contingent charges upon the British exchequer. Under these circumstances, it was determined, on full consideration, that the resolution approving this charge should be voted in committee.[3] This resolution was communicated to the Lords, and their concurrence obtained.[4] But, in December 1878, when it was merely sought to obtain the consent of both houses, in compliance with the terms of the Act, to the application of the Indian revenue to the Afghan war, no such preliminaries were deemed necessary, and the consent of both houses was signified by resolutions agreed to independently.[5] And on the 1st August 1882, the same course was taken in reference to the despatch of a military force from India, for service in Egypt.[6]

Abstract resolutions.

But the rules applicable to grants of money, and motions for increasing the burthens upon the people, do not apply to resolutions expressive of any abstract opinion of the house upon such matters.[7] Such resolutions have been allowed upon the principle, that not being offered in a form in which

[1] 114 Com. J. 55; and again in 1860; 115 Ib. 455; Military Orphan Fund, 1866; 121 Ib. 156, &c.

[2] 21 & 22 Vict. c. 106, s. 55.

[3] 28th Nov. 1867; 123 Com. J. 15.

[4] Ib. 18. 26.

[5] 12th and 17th Dec. 1878.

[6] 137 Com. J. 416.

[7] Prince of Wales, 24th May 1787. National monuments and works of art, 16th April 1844. Emigration of young persons, 6th June 1848. Danish claims, 9th June 1841, 26th June 1851. Scotch inspectors and surveyors of taxes, 23rd June 1857. River Thames (amendment on going into committee of supply), 9th July 1858. National defences (Mr. Horsman), 29th July 1859. Recreation grounds, 15th May 1860. Harbours of refuge, 6th May 1862. Sailors' Homes, 24th April 1863. County Court Judges (salaries), 29th June 1869. Harbours of refuge, 1871, 1876, and 1877. Irish Sea Coast Fisheries, 1874, &c.

a vote of the house for granting money, or imposing a burthen, can be regularly agreed to, they are barren of results, and are, therefore, to be regarded in the same light as any other abstract resolutions. But for that very reason, they are objectionable; and being also an evasion of wholesome rules, they are discouraged as much as possible.

Packet and telegraphic contracts.

As a check upon corrupt or improvident contracts, it is provided by Standing Orders, that in every contract for packet and telegraphic services, beyond sea, a condition should be inserted that the contract shall not be binding until it has been approved of by a resolution of the house. Every such contract is to be forthwith laid upon the table, if Parliament be sitting, or otherwise within fourteen days after it assembles, with a copy of a Treasury minute setting forth the grounds upon which the contract was authorised.[1] No such contract is to be confirmed, nor power given to the Government to enter into agreements, by which obligations at the public charge are undertaken, by any private act.[2] All such contracts are, accordingly, approved by resolutions of the house.[3]

In compliance with these several rules,—for receiving recommendations from the Crown for the grant of money,—for deferring the consideration of motions for grants of money until another day, and for referring them to a committee of the whole house,—the proceedings of Parliament, in the annual grants of money for the public service, are conducted in the following manner.

Royal speech.

On the opening of Parliament, the Queen, in her speech from the throne, addresses the Commons; demands the annual provision for the public service; and acquaints them that she has directed the estimates to be laid before them.

[1] On the 16th June 1873, in the case of the Cape of Good Hope and Zanzibar mail contract, notice being taken that a Treasury letter had been presented instead of a Treasury minute, the order for resuming the adjourned debate on the contract was discharged; and amended papers were presented.

[2] Standing Orders, 13th July 1869.

[3] 125 Com. J. 267. 414, &c.

Committees of supply and ways and means.

Directly the house has agreed to the address in answer to the Queen's speech, the committees of supply and ways and means are appointed for a future day, by virtue of a Standing Order of the 28th July 1870.[1]

Estimates, when presented.

In order that the house may be informed, as early as possible, of the expenditure for which it will have to provide, the following resolution was agreed to, 19th February 1821:—

"That this house considers it essentially useful to the exact performance of its duties, as guardians of the public purse, that during the continuance of the peace, whenever Parliament shall be assembled before Christmas, the estimates for the navy, army, and ordnance departments should be presented before the 15th day of January then next following, if Parliament be then sitting; and that such estimates should be presented within ten days after the opening of the committee of supply, when Parliament shall not be assembled till after Christmas."[2]

This resolution was not made a Standing Order; but its directions have been uniformly observed, as far as possible, by the several departments. The estimates for civil services, commonly known as the civil service estimates, and for the revenue departments, are also presented, not much later, by command of her Majesty.

Annual grants described.

Before the proceedings of the committee of supply are entered upon, it should be understood that a large proportion of the annual expenditure consists of payments out of the consolidated fund, secured by various Acts of Parliament. For these charges the Commons had provided, in the first instance, before the passing of the Acts by which they are secured: but such payments no longer require the annual sanction of Parliament, as permanent statutes now authorise the application of the public income to the discharge of its legal liabilities. But for the expenditure not secured by statute, the Commons provide, annually, by specific grants, which authorise the payment of distinct sums of money, for

[1] By this Standing Order the former preliminaries were discontinued. See 6th edition, 551.

[2] 76 Com. J. 87.

particular services, as explained by estimates laid before them, upon the responsibility of the ministers of the Crown.

Committee of supply.

When these estimates have been presented, printed, and circulated amongst the members, the sittings of the committee of supply begin. The estimates, and any accounts which are necessary to guide the committee, are referred; and occasionally treaties and other State papers.[1] In the case of the army and navy estimates, the member of the administration representing the department first explains to the committee such matters as may satisfy them of the general correctness and propriety of the estimates,[2] and then proceeds to propose each grant in succession; which is put from the chair in these words, "That a sum not exceeding £—— be granted to her Majesty," for the object specified in the estimate.

Chairman of committees of supply and ways and means.

At the beginning of a new Parliament the first business of the committee of supply is to elect a chairman, who, when chosen, continues to preside over that committee for the remainder of the Parliament.[3] If any difference should arise in his election, the Speaker resumes the chair, and the house determines what member shall take the chair of the committee, as in the case of other committees of the whole house.[4] This official chairman, who is designated the chairman of the committee of ways and means, also presides over the committee of ways and means, and other committees of the whole house; and executes various duties in connexion with private bills, which will be described in the proper place.[5]

Committee of ways and means.

Formerly the committee of ways and means was not appointed until the committee of supply had voted a sum of money, as the foundation of its future proceedings; but

[1] 63 Com. J. 429; 68 Ib. 402; 73 Ib. 49; 74 Ib. 577.

[2] In some cases this practice has led to inconvenient discursiveness in debate. See 145 Hans. Deb. 3rd Ser. 1689.

[3] His salary has been voted since 1800, at first by address, and afterwards in the annual estimates. He had previously been paid out of the Civil List; 55 Com. J. 790; 8 Hans. Deb. 231. See also Report on the Office of Speaker, 1853.

[4] See *supra*, p. 428; and Votes, 2nd March 1883 (Sir Arthur Otway).

[5] See Book III. Chapter XXVI.

since 1874, both committees have been appointed immediately after the address has been agreed to. But the committee is not permitted to vote ways and means, in excess of the expenditure voted by the committee of supply. Thus, on the 16th March 1858, when the committee of ways and means stood the first order of the day, and it was proposed to vote amounts equal to the supplies granted on a previous day, as well as to other votes agreed to in the committee of supply, and about to be reported, the order of the day was postponed until after the report of supply, which was the next order: and when the resolutions of the committee of supply had been agreed to, the ways and means were voted to the extent of all the supplies previously granted. According to former practice, votes were not taken in committee of ways and means until after the votes of committee of supply had been reported. But in 1845, and again in 1855, at the end of the session, a deviation from this rule was permitted, and a vote of ways and means was taken, in excess of the supplies reported from the committee of supply. And, in order to save time, votes on ways and means are now taken after the supply votes have been agreed to, and before they are reported: but the supply resolutions are reported and agreed to before those of ways and means. The last vote in the committee of ways and means, at the end of the session, is for a sum out of the consolidated fund which balances the several sums previously voted in the committee of supply.

Former Mutiny bills.

When the committee of supply has determined the number of men who shall be maintained, during the year, for the army and for the sea service, respectively, and these resolutions have been agreed to by the house, the Army (Annual) Bill is immediately ordered to be brought in. Formerly the Mutiny Bill, and the Marine Mutiny Bill, were then introduced.[1] The former provided for the discipline of the troops,

[1] In 1832 an Act was passed continuing the Mutiny Act, which expired on the 31st March, to the 25th April; and according to the later practice the Mutiny Act continued in force in Great Britain until the 25th

and the latter for the regulation and discipline of the royal marines while on shore, and subjected them to martial law: the discipline of the seamen, and of the royal marines while afloat, being secured by permanent statutes.[1] By passing the annual Mutiny Acts in this manner, the Commons reserved to themselves the power of determining, not only the number of men and the sums which should be appropriated, in each year, to their support: but whether there should be any standing army at all. Without their annual sanction the maintenance of a standing army, in time of peace, would have been illegal; and the army and marines on shore would have been released from all martial discipline and subordination.[2] This usage afforded an additional security for the annual meeting of Parliament, which is otherwise ensured by the system of providing money for the public service, by annual grants.[3]

Army Discipline and Regulation Act, 1879.

In 1879, a considerable change was introduced into the methods of providing for the discipline and regulation of the army. Hitherto, every statutory provision for these purposes had been comprised in the Annual Mutiny Act. But in this year, a permanent act was passed for the discipline and regulation of the army. It was, however, provided that this Act should not come into force, except in pursuance of an annual act. In this way the constitutional principle of an annual parliamentary sanction to the maintenance of a standing army was preserved, while a settled code of military law was established. This act also embraced the discipline of the royal marine forces while on shore, which had formerly been the subject of the Annual Marine Mutiny Act.

Sit on Monday, Wednesday, and Friday.

By a custom nearly as ancient as the committees of supply and ways and means themselves,[4] these committees have been

April, and until later periods elsewhere, according to the remoteness of the places in which troops are quartered. 21 Vict. c. 9, s. 107, &c.

[1] 22 Geo. II. c. 33; 29 Geo. II. c. 27; 19 Geo. III. c. 17; 10 & 11 Vict. c. 59. 62; 20 Vict. c. 1.

[2] See preamble to annual Mutiny Act.

[3] See *supra*, p. 59.

[4] See 11 Com. J. 98. 501 (16th February 1693, &c.)

appointed to sit every Monday, Wednesday, and Friday; and until recently were not permitted to sit on any other days: but in 1852, they were also allowed to be appointed for any other day on which orders of the day had precedence;[1] and, by a Standing Order of the 3rd May 1861, they may now be appointed for any day on which the house meets for the despatch of business. But, though the Standing Order directs that these committees shall be appointed to sit on certain days, they can only be so appointed by the order of the house itself; and if the house be counted out on the order of the day, or the question for Mr. Speaker leaving the chair be superseded by adjournment, an order is made at the next sitting of the house, for the re-appointment of the committee;[2] and until such an order has been made, the committees will not stand among the orders of the day. On Friday, the 17th May 1861, the house having been counted out on the order of the day for committee of supply, the order for the committee to sit again on the next meeting of the house, on Thursday the 23rd May, could not be made: but, as the sitting of the committee was urgently desired on that day, Lord Palmerston gave notice that he would move at half-past four, that the house will immediately resolve itself into the committee of supply, by which expedient the difficulty of the case was overcome;[3] and this course has since been occasionally taken on similar occasions.[4]

Amendments on going into committee.

The ancient constitutional doctrine that the redress of grievances is to be considered before the granting of sup-

[1] Standing Orders, 25th June 1852, and 19th July 1854.

[2] 125 Com. J. 284.

[3] Above the orders of the day, and between lines, "Supply Committee" was also printed in italics.

[4] 26th June 1876; 23rd June 1877. See Mr. Speaker's explanation, 235 Hans. Deb. 3rd Ser. 203. 261; 13th May 1878, &c. On Friday, 31st May 1878, the house having adjourned during a debate upon an amendment on going into committee of supply, relating to university education in Ireland, the committee of supply was revived on Monday, 3rd June, by a resolution that the house will immediately resolve itself into committee of supply; but the amendment could not be revived with it. A member, however, rose and again moved the same amendment, and the debate was continued.

plies, is now represented by the practice of permitting every description of amendment to be moved on the question for the Speaker leaving the chair, before going into the committee of supply, or ways and means. Upon other orders of the day, such amendments must be relevant: but here they are permitted, except under certain conditions, to relate to every question upon which any member may desire to offer a motion. Since 1872, however, the house had imposed, from time to time, some restraints upon this most inconvenient practice:[1] and by Standing Order, 27th November 1882,

Committee of supply on Monday and Thursday.

"Whenever the committee of supply stands as the first order of the day on Monday or Thursday, Mr. Speaker shall leave the chair without putting any question, unless on first going into supply on the army, navy, or civil service estimates respectively, or on any vote of credit, an amendment be moved, or question raised, relating to the estimates proposed to be taken in supply."

On the 1st March 1883, the Speaker laid it down that under this order he was bound to leave the chair when supply stood the first order on Monday or Thursday, except on the first occasion of considering the regular annual estimates, or a vote of credit; and accordingly ruled that Mr. Onslow could not move an amendment on going into committee to consider supplementary estimates. And this ruling was repeated on the following day, and is now the established practice.

In 1861, the practice of moving amendments on going into committee of supply on Fridays received definite sanction by a Standing Order, which requires,

"That while the committees of supply and ways and means are open, the first order of the day on Friday shall be either supply or ways and means; and that on that order being read, the question shall be proposed, 'That Mr. Speaker do now leave the chair.'"[2]

[1] 26th Feb. 1873; rule relaxed 17th Feb. 1876. See Report of the Committee on Public Business, in 1878.

[2] Standing Order, 3rd May 1861. This order does not apply to morning sittings, which are specially appointed for particular business, independently of the evening sittings; Mr. Speaker Denison's Note-Book, June 1863; 171 Hans. Deb. 3rd Ser. 707. On the 12th July 1867, this

Friday has, in effect, become a notice day, with a contingent residue of time for votes in supply and other government orders: but the motions assume the form of amendments, or discussion, on going into committee of supply. So distinctly is Friday regarded as a notice day, that government tellers are not required to be named in support of the question for the Speaker now leaving the chair; but tellers may be appointed for and against the amendment, as if it were an original motion.[1]

Where there are several notices of amendments on going into committee, it should be borne in mind, that while the Speaker endeavours to facilitate their being moved, as far as possible, in their order, he cannot call upon any member for that purpose until he rises to speak.[2] When the first amendment is negatived, by the house affirming that the words proposed to be left out shall stand part of the question, no other amendment can be moved: but if amendments are by leave of the house withdrawn, other amendments can be offered. On the 16th June 1865, on the first amendment, the question "that the words proposed to be left out stand part of the question" was negatived: but the question for adding the words of the amendment was also negatived. Two other amendments were then proposed for adding words to the original question, now reduced to the word "that," but withdrawn; and a third was put and negatived; when at length words were added for the postponement of the committee to another day.[3] On the 11th August 1871, the question "that the words proposed to be left out stand part of the question," having been negatived,

order was read and suspended, and the Representation of the People Bill was set down as first order of the day; 122 Com. J. 365.

[1] Mail Contracts, 12th Mar. 1869; 124 Com. J. 80. Monastic Institutions, 31st March 1876; 131 Ib. 132. East India (Duty on Cotton Goods), 4th April 1879; 134 Ib. 136. Sale of Intoxicating Drinks on Sunday, 25th June 1880; 135 Ib. 247. Contagious Diseases Acts, 20th April 1883 (see Mr. Speaker's ruling). Local Option, 27th April 1883; Mr. Speaker Brand's Note-Book.

[2] 174 Hans. Deb. 3rd Ser. 1960.

[3] Votes, p. 585. 180 Hans. Deb. 3rd Ser. 369-427.

and also the question for adding the words of the proposed amendment, other words were added to the original question, by which the house agreed to resolve itself immediately into committee of supply.[1] It is also a common practice, without moving any amendment, to call the attention of the house to particular subjects, on the question for the Speaker leaving the chair, the rules of relevancy in debate, as well as in amendments, being wholly ignored on these occasions: with these exceptions, that a member may not discuss any previous or intended votes of the committee of supply, or items in the estimates,[2] nor any resolution to be proposed in the committee of ways and means;[3] nor any other order of the day, or motion of which a notice has been given.[4] A member who has spoken to one amendment, may speak again after another amendment has been proposed: but if he has spoken in a debate raised upon any subject, where no amendment has been moved, he cannot speak again while the main question is still before the house: but he may speak if an amendment be afterwards proposed.[5] An amendment, if carried, supersedes the question for the Speaker now leaving the chair, but not the order of the day, which has been read. The committee cannot be suffered to drop; and a time must therefore be appointed for its sitting. Generally another day

[1] 126 Com. J. 416.

[2] 2nd June 1856 (Mr. Blackburn), not reported. On the 25th July 1861, Mr. Hope rose to move as an amendment to the question for Mr. Speaker to leave the chair, an address praying that a sum already voted for the Royal Military College at Sandhurst should not be expended until the house had had time to consider the plan of certain proposed buildings: but the Speaker ruled that such an amendment was out of order, and could not be put from the chair, as the vote to which it referred had already been agreed to in committee of supply, and by the house, and could not be reopened in that form; 164 Hans. Deb. 3rd Ser. 1498; Mr. Speaker Denison's Note-Book. See also 24th Feb. 1862; 165 Hans. Deb. 3rd Ser. 639. Dockyard Commission, 22nd Feb. 1864; 173 Hans. Deb. 3rd Ser. 903. Greenwich Hospital, 5th Aug. 1867; 189 Ib. 857. Number of land forces, 4th March 1872; 209 Ib. 1327.

[3] On the 21st April 1864, Mr. Sheridan's amendment on fire insurances was framed so as to avoid this irregularity; 174 Hans. Deb. 3rd Ser. 1439.

[4] 142 Ib. 1026; 146 Ib. 1699; and see *supra*, p. 352.

[5] 175 Ib. 770.

has been appointed;[1] but when it is still desired to proceed further, on the same night, with the order of the day, the house agrees to a resolution that it will immediately resolve itself into the committee. The question for the Speaker now leaving the chair is then proposed a second time;[2] and though amendments may again be moved or discussions raised,[3] the house is generally allowed, at length, to proceed with the other business appointed for the day, without further opposition. Sometimes the house has divided upon the question for the Speaker to leave the chair, without any amendment having been proposed.[4] Discussions have sometimes arisen upon the question of appointing another day for the committee of supply, instead of proceeding with the remaining notices on the paper.[5] But the choice must necessarily be determined by the hour at which the debate upon

[1] 14th March 1879, Ordnance Corps; 134 Com. J. 94. 4th April 1879, East India Cotton Goods; Ib. 136. 2nd May 1879, Irish Land Act, 1870; Ib. 177. 20th June 1879, Cyprus Ordinances; Ib. 285. 4th July 1879, Agricultural Distress; Ib. 319. 18th June 1880, Local Option; 135 Ib. 223. 16th July 1880, Prince Louis Napoleon's Monument; Ib. 309. 23rd July 1880, Armenia; Ib. 330. 13th August 1880, West of Ireland; Ib. 382. 11th March 1881, Ancient Monuments; 136 Ib. 122. 13th May 1881, Minister of Agriculture and Commerce; Ib. 235. 20th April 1883, Contagious Diseases Acts; 138 Ib. 154. 27th April 1883, Local Option; Votes, p. 358. 4th May 1883, Railway Commission, Votes, p. 392.

[2] Flogging in the Army, 15th March 1867; 122 Com. J. 106. Duchy of Lancaster, 5th May 1871; 206 Hans. Deb. 3rd Ser. 323. Slave Trade (Egypt and Turkey), 16th March 1877; 132 Com. J. 119. University Education (Ireland), 3rd June 1878; 133 Ib. 266. Turkey and Greece, 6th May 1881; 136 Ib. 219. National Gallery, 9th June 1881; 136 Ib. 288. Compulsory Education (Ireland), 2nd March 1883; Votes, p. 106. On the 27th July 1874, this proceeding was adopted in the case of the committee of ways and means, after an amendment to the question for the Speaker to leave the chair had been agreed to (Monastic and Conventual Institutions).

[3] 174 Hans. Deb. 3rd Ser. 1960; 205 Ib. 1515; 206 Ib. 322.

[4] 7th March 1783; 24th May 1860.

[5] 5th May 1871; see Mr. Speaker's observations, 206 Hans. Deb. 3rd Ser. 322; 6th April 1883, when Mr. Speaker stated that he was not aware of any order or practice which rendered it obligatory on the government to set up supply again, on Friday; 4th May 1883, when a warm debate was raised upon this question.

the amendment is closed, the pressure of notices still standing upon the paper, the expectation of obtaining votes in committee of supply, and the importance or urgency of other orders of the day, for the same evening.

Functions of these committees distinguished.

As the committees of supply and ways and means continue to sit during the session, are presided over by the same chairman, are both concerned in providing money for the public service, and are governed by the same rules and usage, it will be necessary to distinguish their peculiar functions, before a more detailed account is given of the forms of procedure which apply equally to both. The general resemblance between these committees has sometimes caused a confusion in regard to the proper functions of each: but the terms of their appointment define at once their distinctive duties. The committee of supply considers what specific grants of money shall be voted, as supplies demanded by the Crown, for the service of the current year, and explained by the estimates and accounts prepared by the executive government, and referred by the house to the committee. The committee of ways and means determines in what manner the necessary funds shall be raised, to meet the grants which are voted by the committee of supply, and which are otherwise required for the public service. The former committee controls the public expenditure; the latter provides the public income: the one authorises the payment of money; the other sanctions the imposition of taxes, and the application of public revenues, not otherwise applicable to the service of the year.

Functions of the committee of supply.

Their separate duties may be further explained by enumerating, more particularly, the specific matters considered by each. The committee of supply votes every sum which is granted annually for the public service—the army, the navy, and the several civil and revenue departments. But the fact already explained should be constantly borne in mind, that in addition to these particular services, which are voted in detail, there are permanent charges upon the public revenue, secured by Acts of Parliament, which the

Consolidated fund.

Treasury are bound to defray, as directed by law. In this class are included the interest of the national funded debt, the civil list of her Majesty, the annuities of the royal family, and the salaries and pensions of the judges and some other public officers. These are annual charges upon the consolidated fund: but the specific appropriation of the respective sums necessary to defray those charges having been permanently authorized by statutes, is independent of annual grants, and is beyond the control of the committee of supply.

Functions of the committee of ways and means.

Parliament has already empowered the Treasury to apply the consolidated fund to the payment of these statutory charges when they become due: but this fund cannot be applied generally, to meet the supplies voted for the service of the year, without the annual authority of Parliament. For this purpose the committee of ways and means votes general grants from time to time out of the consolidated fund, "towards making good the supply granted to her Majesty;" and bills are founded upon these resolutions of the committee, by which authority is given to issue the necessary amounts from the consolidated fund, for the service of the year.

Exchequer bills.

It was formerly one of the functions of the committee of ways and means to vote the sums to be annually raised by exchequer bills: but by 24 & 25 Vict. c. 5, the Treasury is empowered to issue new exchequer bills to replace former exchequer bills to an amount not exceeding 13,230,000*l.*; the monies raised by such bills being carried to the consolidated fund, and the principal and interest being paid out of that fund. But if a larger amount of exchequer bills should be required, in any year, it would be voted in committee of ways and means. The issue of exchequer bonds is still authorized by resolutions of the committee of ways and means; and the sums necessary to pay off those becoming due are voted in committee of supply.

Annual budget.

One of the most important occasions for which the com-

mittee of ways and means is required to sit, is for receiving the financial statement for the year from the chancellor of the exchequer.[1] When some progress has been made in voting the estimates for the army and navy, and other public services, and the minister has had sufficient time to calculate the probable income and expenditure for the financial year, commencing on the 1st April, he is prepared to determine what taxes should be repealed, reduced, continued, or augmented, or what new taxes must be imposed. As it is the province of the committee of ways and means to originate all taxes for the service of the year, it is in that committee that the chancellor of the exchequer usually developes his views of the resources of the country, communicates his calculations of the probable income and expenditure, and declares whether the burdens upon the people are to be increased or diminished. This statement, familiarly known as "the budget," is regarded with greater interest, perhaps, than any other speech throughout the session. The chancellor of the exchequer concludes by proposing resolutions for the adoption of the committee; which, when afterwards reported to the house, form the groundwork of bills for accomplishing the financial objects proposed by the minister. Financial statements, however, have not invariably been made in the committee of ways and means. On the 3rd December 1852,[2] and again on the 13th February 1857,[3] the chancellor of the exchequer made his statement in committee of supply, before the usual votes for the service of the year had been taken. In 1823, the budget was brought forward in the committee on the Exchequer Bills bill.[4] In 1860, it was introduced in a committee on the Customs Acts.[5] In 1845 and 1848 also, the budgets, though brought forward in committee of ways

[1] Or sometimes the first lord of the treasury, if a member of the House of Commons.

[2] 123 Hans. Deb. 3rd Ser. 836.

[3] 144 Ib. 631.

[4] 9 Ib., N. S. 1413.

[5] 156 Hans. Deb. 3rd Ser. 812.

and means, were presented in anticipation of the customary votes in the committee of supply.[1]

Charges of collection.

It may here be observed that, until 1854, the charges of collecting the revenue were deducted by each department, from the gross sums collected; and thus neither the whole produce of the taxes, nor the cost of collecting them, was within the immediate control of Parliament. On the 30th May 1848, the house resolved, "That this house cannot be the effectual guardian of the revenues of the state, unless the whole amount of the taxes, and of various other sources of income received for the public account, be either paid in or accounted for to the exchequer;"[2] but it was not until 1854 that an act was passed, by which the whole of this expenditure was brought under the supervision of the House of Commons; and estimates were voted for the revenue departments.[3] At the same time, several charges were transferred from the consolidated fund to the annual estimates.

Proceedings in committee.

The rules of proceeding in the committees of supply and ways and means are precisely similar to those observed in other committees of the whole house. It has been stated, in other places,[4] as an ancient order of the house, "That where there comes a question between the greater and lesser sum, or the longer and shorter time, the least sum and longest time ought first to be put to the question."[5] This rule is applicable to other committees where taxes are granted, or money voted, but is more frequently brought into operation in these committees, where such questions form the only subjects of discussion.[6] The object of this rule is said to be,

Greater or lesser sum.

[1] 77 Hans. Deb. 3rd Ser. 455; 96 Ib. 900. 987.

[2] 103 Com. J. 580.

[3] 109 Ib. 467.

[4] See *supra*, pp. 433. 562.

[5] See debate in 1675, where Mr. Sawyer denied the existence of any such ancient order, having searched the Journals. Sir T. Meres, an old Parliament man of 80, said it had always been the rule; and after discussion it was agreed to be an ancient order; 3 Grey's Deb. 381—388.

[6] 88 Com. J. 325. The principle of this rule was not adhered to, 6th May 1853, in putting the question for levying the property tax in the United Kingdom; 108 Com. J. 467. The proceedings in committee of ways and means, 6th March 1857,

"that the charge may be made as easy upon the people as possible:" but how that desirable result can be secured by putting one question before the other, is not very apparent; for if the majority were in favour of the smaller sum, they would negative the greater when proposed. If the smaller sum be resolved in the affirmative, the point is settled at once, and no question is put upon the greater. A direct negative of the larger sum, however, is, in this manner, avoided; and it has been urged as one of the merits of the rule, that the discourtesy of refusing to grant a sum demanded by the Crown, is mitigated by this course of proceeding. This rule is carried into effect not by way of amendment, but by proposing a distinct resolution for granting the smaller sum.[1]

This rule, however, is only applicable where the greater and lesser sums are both before the committee at the same time. It cannot exclude the subsequent proposal of other sums, greater or less than those previously proposed. Thus, in the committee of supply, on the 31st March 1848, after a reduction of the proposed number of men for the land forces had been negatived, another reduction was proposed and negatived.[2] Again, on the 14th and 31st March, and the 7th April 1856, after reductions of the sum originally proposed had been negatived, still further reductions were proposed, and voted upon.[3] It may happen, indeed, that the vote cannot be actually first taken upon the smallest sum proposed; as where one proposal is to diminish a vote, and another is to refuse it altogether. Practically, the latter is for the smaller sum of the two; but being merely a negation of the vote originally proposed, the former proposal, if not withdrawn, must be first put to the vote.[4]

New rules of proceeding in

The proceedings of the committee of supply, when governed

on the tea and sugar duties, afford a good illustration of the application of this rule; 112 Com. J. 86. Also on the income tax, 21st July 1859 and 23rd March 1860.

[1] 114 Com. J. 291; 115 Ib. 153.

[2] 103 Ib. 405.

[3] 111 Ib. 101. 106. 124.

[4] See proceedings, 6th June 1856, St. James's Park; Lord R. Grosvenor, Mr. Tite, and Sir Joseph Paxton; 142 Hans. Deb. 3rd Ser. 1134.

committee of supply.

entirely by this rule, were exposed to the objection that where a vote comprised separate items, and a smaller sum than that first proposed was agreed to, all further reductions, on account of other items, were excluded.[1] Again, every item comprised in a vote was open to discussion at the same time, which often occasioned confusion, if not absurdity.[2] A further objection to the customary forms was, that there was no record in the Journal of the items in respect of which any reduction of the vote was proposed.[3] In 1857, a committee was appointed to consider these forms of proceedings,[4] whose report led, on the 9th February 1858, to the adoption of the following resolutions by the house:—

"That when a motion is made, in committee of supply, to omit or reduce any item of a vote, a question shall be proposed from the chair for omitting or reducing such item accordingly; and members shall speak to such question only, until it has been disposed of."

"That when several motions are offered, they shall be taken in the order in which the items to which they relate appear in the printed estimates."

"That after a question has been proposed from the chair for omitting or reducing any item, no motion shall be made, or debate allowed upon any preceding item."[5]

And on the 28th April 1868 it was further resolved,—

"That when it has been proposed to omit or reduce items in a vote, the question shall be afterwards put upon the original vote, or upon the reduced vote, as the case may be."

"That after a question has been proposed from the chair for a reduction of the whole vote, no motion shall be made for omitting or reducing any item."[6]

These new rules have entirely altered the practice of the committee of supply, in dealing with the votes proposed. The question upon the whole vote is first proposed from the chair; and if a motion be made to omit or reduce any item

[1] 145 Hans. Deb. 3rd Ser. 1729.

[2] 146 Ib. 58–68.

[3] See 145 Hans. Deb. 3rd Ser. 2047 *et seq.*

[4] 1857 (261), Sess. 2.

[5] 113 Com. J. 42; a fourth resolution was rescinded on the 28th April 1868.

[6] 123 Ib. 145.

comprised in that vote, a question is put, that the item objected to "be omitted from the proposed vote," or "be reduced by the sum of £——," as the case may be.[1] But where a general reduction of the amount of the vote is proposed, comprising many items, the old form of putting the question upon the smaller sum is reverted to,[2] as the rules apply to distinct items only. On the 15th June 1863, the estimate for the purchase of land at South Kensington comprised three items; but the Government, in committee, moved the first item as a separate vote, which was agreed to; and the two other items as another vote, which was negatived. Exceptions were taken to the regularity of this proceeding; but they were overruled.[3] The reduction of a vote, or item, should be of a substantial, and not merely of a nominal, amount; otherwise the chairman has declined to put the question,[4] nor may a series of motions be made upon the same vote, raising, substantially, the same issue.[5] Where two or more amendments are proposed to the same vote, the chairman will put first that which proposes the largest reduction, and if that be not accepted, will proceed with the other amendments.[6] Where a motion has been made for the reduction of an entire vote, no proposal can be made for omitting an item from that vote unless the original motion be withdrawn.[7]

Longer or shorter time.

The questions of the longer or shorter time had reference to the ancient mode of granting subsidies, which were rendered a lighter burthen on the subject, by being extended over a longer period; and the present system of grants does not, therefore, admit of the application of this part of the

[1] 123 Com. J. 306; 134 Ib. 97. 396; 135 Ib. 79; 136 Ib. 476; 137 Ib. 83, &c.

[2] 9th and 12th July 1858; 113 Com. J. 294. 298. 19th April 1860; 115 Ib. 191. 9th May 1862 (Science and Art Department); 117 Ib. 190.

[3] 171 Hans. Deb. 3rd Ser. 937.

[4] On the 9th June 1879, the chairman declined to put the question on a reduction of 5*l.*; 246 Hans. Deb. 3rd Ser. 1439. 13th June 1878; 240 Ib. 1456.

[5] 7th August 1877; 236 Ib. 592.

[6] 21st July 1879; 248 Ib. 911.

[7] 9th April 1877; 233 Hans. Deb. 3rd Ser. 784.

rule. But its principle is still regarded in the committee of ways and means, whenever the time at which a tax shall commence, is under discussion; for the most distant time being favourable to the people, the question for that time is first put from the chair.

These rules not observed in proceedings of the house.

In the proceedings of the house on the report from a committee, amendments are proposed in the ordinary form;[1] neither the greater or lesser sum, nor the longer or shorter time, being ever regarded, in questions proposed in the house itself.[2] The rule, indeed, is incompatible with the form of putting a question upon an amendment. If it be proposed to amend a question, by inserting a smaller sum, the house must decide whether the words of the question,—being the larger sum,—shall stand part of the question. Thus, on the report of the resolution, 25th May 1857, for granting an annuity of £8,000 to the Princess Royal, an amendment for reducing that amount to £6,000, was put in the usual manner.[3] Again, on the 30th March 1860, on the consideration of the Income Tax Bill, as amended, an amendment was proposed to leave out "ten-pence" in order to insert "nine-pence." The question was put that "ten-pence" stand part of the Bill.[4] On the 24th March 1871, it was proposed to reduce the number of men for the army, as voted by the committee, and the question was put that the larger number stand part of the resolution.[5] And on several later occasions where amendments have been passed to reduce the sums voted by the committee of supply, the question has been put that the larger amount stand part of the resolution.[6]

Questions and amendments

In committee of supply it is irregular to propose any

[1] 3 Hatsell, 184, *n*.

[2] Establishment of Prince and Princess of Wales, 15th March 1795; 50 Com. J. 538; New Houses of Parliament, 10th June 1850; General Register House, Edinburgh, 16th July 1858; Harbours of Refuge, 8th June 1863. On the 18th July 1870, several resolutions of the committee of supply were so amended. Income Tax, 4th May 1871.

[3] 112 Com. J. 174.

[4] 115 Ib. 173.

[5] 126 Ib. 107.

[6] 127 Ib. 330. 418; 129 Ib. 164; 136 Ib. 274; 137 Ib. 126.

motion or amendment not relating to a grant under consideration; as the committee may grant or refuse a supply, or may reduce the amount proposed, but have no other function.[1] On the 18th May 1863, exception was taken to the form of a vote proposed, on account, for the packet service, which provided that no part of the sum voted was to be applicable to payments to Mr. Churchward, for the conveyance of mails, subsequent to the 20th June 1863.[2] It was argued that the latter part of the resolution expressed an opinion concerning a particular contract, beyond the proper functions of the committee of supply; but as it was strictly relevant to the vote for the packet service, and merely defined and limited the purposes for which such vote was designed, it was held, first by the chairman, and after full discussion by the house itself, to be regular.[3] Again, on the 31st May 1867, on a vote for erecting a building for the University of London, a proviso was added, by amendment, "that no part of such sum shall be applied to the erection of any building according to either of the designs now exhibited;"[4] but this proviso was afterwards omitted on the report.[5]

in committees of supply and ways and means.

A grant recommended by a message from the Crown, or proposed in the annual estimates, presented by command of her Majesty, cannot be increased. On the 8th December 1857, in committee on the Queen's message for granting £1,000 a year to Sir Henry Havelock, for the term of his natural life, a member desired to propose that the pension should be continued to his son: but the chairman intimated that he should not be able to put any such amendment, without the recommendation of the Crown.[6] On the death of

Grants cannot be increased.

[1] But on the 4th August 1843, an amendment was proposed, but not made, to the terms of a resolution, for granting compensation to the owners of opium in China, by leaving out the words "made good," and inserting "enable her Majesty to make compensation." 98 Com. J. 542.

[2] Votes and Debates, 18th and 28th May 1863.

[3] In 1868, this proviso was added, on report. 123 Com. J. 274.

[4] 122 Ib. 266.

[5] Ib. 270.

[6] 148 Hans. Deb. 3rd Ser. 392. But in 1812, upon a message from

Sir Henry Havelock, the order for the committee on the bill was discharged, and the bill withdrawn; and, the Queen's recommendation being signified, another committee of the whole house resolved that annuities should be granted to Lady Havelock and her son, Sir Henry Havelock; and a bill founded upon that resolution was passed.[1] Nor can any item comprised in a vote be increased.[2] In 1858, the new ministry having proposed reductions in the army and navy estimates prepared by their predecessors, a question arose whether, in committee of supply, the votes proposed by them might not be increased to the amount of the original estimates. To obviate these doubts, revised army estimates were prepared, and the order for referring the original army estimates to the committee was discharged: but as regards the navy estimates, no such precaution was taken. Again, on the 9th March 1863, it was held that it was not competent for a member to move an addition to the number of men proposed to be voted in the army estimates, though it was alleged that provision was actually made in the estimates for that larger number.

Proposal of a new tax, except by a minister.

As a proposed grant cannot be increased, in committee of supply, nor a new grant made, unless recommended by the Crown, so also it appears that a new tax cannot be imposed except with the indirect sanction of the Crown. On the 14th March 1844, Mr. Howard Elphinstone proposed a committee of the whole house to consider the Stamp Acts, with the view of imposing the same amount of probate duty on real estate as was paid on personal property. An objection being taken to this proceeding, the Speaker said that the

the Prince Regent, recommending, in general terms, provision to be made for the family of Mr. Spencer Perceval, amendments were permitted for increasing the provision proposed by the ministers; 23 Hans. Deb. 199. 217. 243; 2 Walpole, Life of Spencer Perceval, 303.

[1] 113 Com. J. 23. 36.

[2] Pay of general officers, 10th March 1834; 21 Hans. Deb. 3rd Ser. 1377. An increase in the number of men, 9th March 1863; 169 Ib. 1267. General officers of marines, 29th Feb. 1864; 173 Ib. 1282.

duty must be considered as imposed for the service of the year, and should therefore be voted in the committee of ways and means: but it ought not to be proposed, unless it could be shown that the public service required it. After some discussion, the motion was withdrawn. On the 6th August 1859, Mr. Selwyn having given notice of a resolution for imposing certain stamp duties, of which the chancellor of the exchequer approved, the latter agreed to propose it himself, in committee of ways and means. In April 1862, the chancellor of the exchequer having given notice of resolutions in committee of ways and means, requiring licences to be taken out by brewers, Mr. Bass gave notice of an amendment extending such licences to other manufacturers, iron masters, and coal owners: but this amendment being held to be inadmissible, was not moved.[1] On the 17th February 1845, however, Mr. Roebuck moved an amendment, in committee of ways and means, for extending the income tax to Ireland,[2]—an exceptional course not supported by precedent, and opposed to the principles upon which grants are made to the Crown. But this objection does not apply to an amendment by which it is sought to substitute another tax, of equivalent amount, for that proposed by ministers, the necessity of new taxation, to a given extent, being already declared on behalf of the Crown. Upon these grounds, on the 10th December 1852, an amendment to substitute probate and legacy duty on real property, for an inhabited house duty, was held to be regular.[3] A motion or amendment, in committee of ways and means, must relate to the tax proposed: but as the functions of that committee are of a more extended character, the rule cannot be so strictly enforced as in the committee of supply. On the 25th April

Amendments in committee of ways and means.

[1] Notices of motions, 10th April 1862, p. 407.

[2] 77 Hans. Deb. 3rd Ser. 637. 751.

[3] Mr. W. Williams, 108 Com. J. 187. See Debate, 16th Dec. 1852, on the form of putting the question on the inhabited house duty, where nothing but a preamble of the resolution had been originally proposed from the chair.

1853, the new property tax was proposed for seven years. An amendment was moved to leave out the words "towards raising the supply granted to her Majesty, there shall be raised annually during the terms hereinafter limited, the several rates and duties following," &c., in order to insert the words, "The continuance of the income tax for seven years, and its extension to classes heretofore exempt from its operation, without any mitigation of the inequalities of its assessment, are alike unjust and impolitic." [1] Considerable doubts were entertained whether such an amendment was regular, it being the province of the committee to consider the ways and means, for the service of the year, and not to discuss general principles: but it was held that as the amendment was strictly relevant to the proposed duty, it could not be excluded.[2]

Reduction of duties in committee of ways and means.

It is the function of the committee of ways and means to impose rather than to repeal taxes: and as bills for the latter purpose do not require any previous vote in committee, proposals of that nature seldom originate in committee of ways and means, unless they are connected with other alterations of duties. Yet, as all the financial arrangements of the year are properly within the cognizance of that committee, the reduction or repeal of taxes may be proposed there, with as much regularity as their imposition or increase; the one being, in fact, an equivalent for the other, in the general balance of ways and means.[3] And this course has accord-

[1] 108 Com. J. 431.

[2] 126 Hans. Deb. 3rd Ser. 453. In April 1871, Mr. Disraeli gave notice that on the 27th, in committee of ways and means, he would move a resolution, "that the financial proposals of her Majesty's Government are unsatisfactory, and ought to be re-considered by the Government." The resolution was intended to be moved, not as an amendment to any resolution about to be proposed, in consequence of changes in the budget, but as a substantive resolution. It was not moved: but it was pronounced, by all the authorities, to be irregular. Even if it had been moved as an amendment, it would not have been relevant to any resolution; and standing apart, as a distinct resolution, it could not have been moved until after the budget resolutions had been agreed to, or negatived; and in either case, the resolution would have been inapplicable.

[3] 3 Hatsell, 290.

ingly been followed whenever it has been deemed suitable to the occasion.[1]

Relevancy in debate.

In committee of supply, it is usual for the minister in charge of the army or navy estimates to make a general statement concerning the services for the year, upon the first vote; and he is followed by other members in a general discussion of the estimates: but after the first vote has been agreed to, the debate must be confined to the particular vote before the committee;[2] and when a motion has been made to omit or reduce an item in a vote, the debate is restricted to that item.[3] A general discussion upon the first vote is not applicable to the civil service estimates; and when Mr. Wilson, in 1857, endeavoured to introduce the practice, it found no favour with the committee.[4] In 1877, however, such a statement was made by Mr. W. H. Smith, with general approval, the Speaker being in the chair;[5] and the same course was adopted by the Vice-President of the Committee of Council, upon the education votes.[6]

A member cannot refer to any vote to which the committee have agreed,[7] nor to a vote not yet submitted to it; nor, under the new rules, when it has been proposed to omit or reduce any item, can he refer to any other item in the same vote.[8] Still less can a member, upon a vote in committee of supply, bring into discussion the merits of a bill then pending in the house.[9] On the 16th April 1860, a general discussion on the navy having taken place before the Speaker left the chair, Lord Clarence Paget, the secretary to the Admiralty,

[1] 6th March 1695, duties on coals, culm, and shipping repealed; 10th May 1766, duties on cotton-wool, &c. repealed; 15th May 1777, duties on silver plate repealed; 4th Dec. 1798, additional house and window duty repealed, and income tax imposed; 14th July 1807, Irish beer duties repealed. Paper duties repealed, 7th May 1861; 116 Com. J. 195.

[2] 223 Hans. Deb. 3rd Ser. 655.

[3] 177 Ib. 1990.

[4] 12th June 1857; 145 Hans. Deb. 3rd Ser. 1712.

[5] 233 Ib. 651; Mr. Speaker Brand's Note-Book.

[6] 235 Hans. Deb. 1048.

[7] 175 Ib. 3rd Ser. 1674.

[8] 177 Ib. 1990.

[9] 6th June 1856, Sir J. Tyrrell, Agricultural Statistics.

reserved his explanations until the house was in committee: but when he was proceeding to refer to matters not comprised in the vote under consideration, he was stopped and pronounced by the chairman to be out of order.[1]

A vote in committee cannot be postponed.

A motion for postponing a vote in committee of supply cannot be entertained. There is no time, indeed, to which it can be postponed. Each vote is a distinct motion, which may be agreed to, reduced, negatived, superseded, or, by leave, withdrawn: but cannot be otherwise disposed of.[2] Sometimes the committee report resolutions, which they have agreed to; but not having completed the consideration of another resolution, also report progress.[3]

Votes on account.

The entire sums proposed to be granted, for particular services, are not always voted at the same time, but a certain sum is occasionally voted on account of such grants. Thus, for example, in 1841, one half only of the estimates, as presented to the house, was voted, in anticipation of a speedy dissolution, and appropriated: and the remaining half was voted by the new Parliament. In 1848, money was voted on account of the several grants, as two committees were sitting at the time upon the public expenditure. In 1850, money was voted on account of several grants, before Easter, and the remainder was voted after Easter; and in 1857, in anticipation of a dissolution, votes were taken on account, for four months. The several votes for the army and navy were separately agreed to: but general votes only were taken for the civil service, and revenue estimates,[4] though in the Appropriation Act the several items were enumerated in the usual form.[5] The remaining estimates, for the service of the year, were voted by the new Parliament. In 1858, in order to accelerate the usual financial arrangements, and the passing of the Mutiny Bill, after the

[1] 157 Hans. Deb. 3rd Ser. 1851.

[2] 175 Ib. 35. 77.

[3] 100 Com. J. 86; 117 Ib. 187; 122 Ib. 429, &c.

[4] 112 Com. J. 94. 98. 103. In 1868, general votes, on account, were taken for the army and navy services.

[5] The same course had been adopted in 1841.

change of ministry, votes were taken on account of the army and navy estimates.[1] Again, in April 1859, votes on account were taken upon all the heads of expenditure, in order to provide for the public service, until after an approaching dissolution; and the votes were completed by the new Parliament.[2] In 1880 the army estimates having been voted early in March, the number of men and boys for the navy was voted, and several votes on account were taken for the navy and civil services, later in March; and Parliament was dissolved on the 24th of March. At other times, when the exigencies of the public service have required votes on account, in anticipation of particular grants, or classes of service, estimates of the amount required for such purposes have been presented, and the necessary grants agreed to.[3] And this course has now become necessary every session, in consequence of increased strictness in the audit of public accounts, and the difficulty of securing the consideration of the estimates in due time.

Where votes on account exceed the amount required.

In 1856, several of the army and navy estimates were voted on account, or for periods of four months, in anticipation of peace; and on the conclusion of peace it became necessary to revise the estimates for the year. After consulting precedents in 1814,[4] statements were presented, by command, showing the amounts of the original army and navy estimates, and of the reduced estimates,[5] and were referred to the committee of supply. In one case the previous vote being in excess of the amount required, the proper

[1] 113 Com. J. 78; 149 Hans. Deb. 3rd Ser. 110.

[2] 114 Com. J. 158. 162.

[3] Army, 29th March, and Civil Services, 25th May 1860; 115 Com. J. 170. 273. Army, 5th April, and Civil Services, 6th May and 25th June 1861; 116 Com. J. 110. 190. 301. Civil Services, 27th March, and Packet Service, 18th May 1863. Civil Services, 18th March 1867. In 1848, votes were taken on account of army and navy services, before the number of men was voted. In 1867 and 1868, the same course was followed for navy services. In 1879, and again in 1881, after estimates of votes on account had been presented, smaller sums were proposed by the government; 244 Hans. Deb. 3rd Ser. 1592; 259 Ib. 1146.

[4] 69 Com. J. 18. 450.

[5] 111 Ib. 172.

amount was voted *de novo*, and the previous resolution rescinded, before the new resolution was agreed to by the house.[1]

Votes of credit and special supplies.

Where a vote of credit on account of war expenditure, or other special grant, not comprised in the estimates, is desired, a message is sometimes sent by the Crown, under the sign manual, to both houses. In the Commons this message is referred to the committee of supply, where the requisite amount is granted; and a corresponding sum is voted by the committee of ways and means,[2] unless there be a surplus revenue available, in which case the grant may be provided for out of general votes in that committee, as was done in 1854.[3] But generally a vote of credit is given, without a message from the Crown. Thus, in 1851 and 1852, votes of credit on account of the Kafir war, were granted upon an estimate being presented;[4] and the same course was adopted in 1856, on a vote of credit for defraying expenses occasioned by the late war;[5] again, in 1860 and 1861, in respect of operations in China;[6] on the 25th November 1867, on account of the expedition to Abyssinia; and on the 1st August 1870, on the breaking out of the war between France and Prussia. In this latter case, however, the Government having determined that it would be necessary to increase the army to the extent of 20,000 men, thought it right to propose a distinct vote for that number of men, as well as a general vote of credit for 2,000,000*l.* The latter vote was comprised in the schedule to the Appropriation Act, with a statement that it included "the cost of a further number of land forces of 20,000 men during the war in Europe." In 1874, votes of credit were taken for the Ashantee war, and in 1878, for naval and military services (6,000,000*l.*), by estimates.[7] So also, in 1879, a vote of credit for the war in South Africa;

[1] Transport Service, 111 Com. J. 268.

[2] 82 Ib. 542.

[3] 109 Ib. 472.

[4] 106 Ib. 181. 303; 107 Ib. 73. 152.

[5] 111 Ib. 269; 115 Ib. 142.

[6] 115 Ib. 382; 116 Ib. 403.

[7] 21st March and 7th May 1874; 129 Com. J. 41. 133; 133 Ib. 40.

and in 1882 a similar vote for the forces in the Mediterranean, was granted upon estimates presented by command.[1]

Report of supply and ways and means.

The resolutions of the committees of supply and ways and means are reported on a day appointed by the house: but not on the same day as that on which they are agreed to by the committee. This is a rule which may only be relaxed in cases of extraordinary urgency. On the 8th May 1797, during the mutiny of the fleet, the committee of supply voted an increase of pay to the seamen and marines; and the report was at once ordered to be received, and was agreed to on the same day. And on the 24th, an increase of pay was voted to the land forces in the same manner.[2] On the 10th May 1860, the house ordered a resolution on wine licences, agreed to by the committee of ways and means, to be reported forthwith, in order to enable them to proceed with the committee on the Refreshment and Wine Licences Bill, which was the next order of the day. On the following day this proceeding was animadverted upon in debate;[3] and on the 14th May, notice being taken that the committee of ways and means had agreed to a resolution which, contrary to the rules and practice of this house, was, without urgent occasion, ordered to be reported forthwith, and was thereupon reported and agreed to by the house, it was ordered that the said proceedings be null and void, and that the resolution of the committee of ways and means be reported *to-morrow*.[4] The same rule applies to money bills, which are never passed through more than one stage on the same day.[5] When the report is received, the resolutions are read a first time, without a question, and a second time upon question put from the chair; and are agreed to by the house; or may be disagreed to,[6]

[1] 134 Com. J. 69; 137 Ib. 410.

[2] 52 Ib. 552. 605; 33 Parl. Hist. 477.

[3] 158 Hans. Deb. 3rd Ser. 1161; 11th May 1860 (motion for adjournment).

[4] 115 Com. J. 240; 158 Hans. Deb. 3rd Ser. 1167.

[5] 239 Hans. Deb. 1419; Mr. Speaker Brand's Note-Book.

[6] 63 Com. J. 89; 71 Ib. 290.

amended,[1] postponed,[2] or re-committed.[3] Any amendment, relevant to the subject-matter, may be proposed to the question for reading resolutions a second time,[4] or general observations may be made at this period:[5] but after they have been read a second time, an amendment to a resolution of the committee of supply, must relate to the amount or destination of the vote agreed to by the committee.[6] Any debate, at this time, should be relevant to the particular resolution;[7] nor under cover of a motion for adjournment can occasion be found for renewing the discussion of any prior resolution already agreed to.[8] In some cases, it has been sought, by amendments, to attach conditions to grants reported from the committee. On the 20th December 1796, it was proposed to add to a resolution for making advances to the Emperor, the words "whenever the engagements respecting the late convention shall have been fulfilled on the part of his Majesty."[9] And on the 1st July 1823, a resolution to defray expenses of buildings at the British Museum was amended, upon a division, by the addition of words requiring the preparation of plans and estimates before any buildings should be undertaken.[10] There are examples in the Journals of amendments being proposed to the question for agreeing to resolutions of the committee of supply:[11] but according to later practice,

[1] 95 Com. J. 574; 101 Ib. 1152; 102 Ib. 481; 103 Ib. 790; 125 Ib. 157.

[2] 76 Ib. 288; 87 Ib. 519; 90 Ib. 461; 119 Ib. 324.

[3] 77 Ib. 314; 113 Ib. 211.

[4] 91 Ib. 272; 5th August 1839, Miscellaneous charges (Scotland). 26th April 1847, Education. 25th July 1854, Vote of Credit, Lord Dudley Stuart's amendment for an address praying that Parliament might not be prorogued until the house had received more full information as to our foreign relations, and prospects in the war; 135 Hans. Deb. 3rd Ser. 709. 7th April 1851, Property Tax. 10th March 1857, Expenditure of the State; 112 Com. J. 94. American Prize Courts, 1863; 118 Ib. 322; 129 Ib. 264.

[5] 174 Hans. Deb. 3rd Ser. 1551.

[6] 10th June 1850, New Houses of Parliament; 112 Com. J. 227; 113 Ib. 306; 114 Ib. 92; 118 Ib. 239.

[7] 174 Hans. Deb. 3rd Ser. 1551.

[8] Quebec Defences, 27th March 1865; 178 Hans. Deb. 3rd Ser. 360.

[9] 52 Com. J. 220.

[10] 78 Ib. 443.

[11] 11th March, 1844, Widows' Pen-

such amendments have been confined to the question for reading resolutions a second time. If it be proposed to amend a resolution on the report, the amendment can only effect a diminution of the proposed burthen, and not an increase.[1] If the latter be desired, the proper course is to re-commit the resolution; as an addition to the public burthens can only be made in committee. When a vote is re-committed, and increased in the committee, the committee report that, in addition to the sum already granted, a further sum be granted for the particular purpose there stated.[2] Sometimes an amendment has been moved to a proposed amendment, upon a resolution reported from the committee of supply, by leaving out all the words of the first amendment, except "pounds," and inserting another amount.[3] Where any inaccuracy in the amount of a vote is discovered, the resolution is re-committed, unless a reduction is to be made, which can be agreed to on report.[4]

Charge not to be increased on report.

Amendments to proposed amendments of resolutions.

When the resolutions of the committee of ways and means are agreed to, bills are ordered to carry them into effect, whenever it is necessary. After a bill founded upon such resolutions has been ordered, but not presented, instructions are often given to the gentlemen appointed to prepare it, to make provision pursuant to other resolutions of the committee, since agreed to:[5] or, if after the bill has been read a second time, further resolutions from the committee, relating to other duties, are agreed to, an instruction is given

Bills founded on resolutions.

sions. 14th June 1849, Militia, &c. Canada.

[1] See Amendment proposed by Mr. Greville, 27th January 1767; 31 Com. J. 76; 3 Hatsell, 179. On the 18th July 1870, the Secretary to the Treasury, having overlooked an intermediate vote on account, had taken sums in excess of the estimates for the year. As this error was to be corrected by a reduction of the amounts voted in the several resolutions, it was readily effected on the report.

[2] 113 Com. J. 320; 124 Ib. 203.

[3] 76 Ib. 487. On the 18th June 1857, a similar case arose, but the amendment not being proposed in proper form, was not put from the chair; 145 Hans. Deb. 3rd Ser. 2074.

[4] 135 Com. J. 367. 372. 375.

[5] 123 Ib. 157. 167; 124 Ib. 132; 125 Ib. 158; 132 Ib. 170.

to the committee on the bill, to make provision accordingly.[1] The resolutions of the committee of supply are reserved until all the supplies for the service of the year have been granted, when they are embraced in the Appropriation Bill, towards the close of the session; and it is irregular to introduce any clause of appropriation into another bill passing through Parliament, before the financial arrangements for the year are concluded.[2]

Propositions for reducing charges upon the people.

It must always be borne in mind, that the house can entertain any motion for diminishing a tax or charge upon the people; and bills are frequently brought in for that purpose, without the formality of a committee. Obstacles are opposed to the imposition of burthens, but not to their removal or alleviation; and this distinction has an influence upon many proceedings not immediately connected with supply. For instance, the blanks left in a bill for salaries, tolls, rates, penalties, &c. are filled up in committee: but on the report, the house may reduce their amount. If, however, it be desired to increase them, the bill should be re-committed for that purpose. So, also, if a clause proposed to be added to a bill enact a penalty, which the house, on the report of the clause, desire to increase, the clause ought to be re-committed.[3] Any bounties, drawbacks, or allowances, involving payments out of the revenue, have usually been proposed in committee: but if an allowance be merely in the form of a deduction from the amount of a proposed duty, it may be entertained by the house, or by the committee on the bill, without any preliminary vote in committee.[4] In 1865, it being proposed to reduce the existing drawback on the export of sugar, it was agreed, on consideration, that the

Drawbacks and allowances.

[1] Fisheries Bill, 1775; Assessed Taxes Bill and Customs Bill, 1798; Goods, Wares, &c. Bill, 1806; Stamp Duties Bill, 1845; 100 Com. J. 743. Customs Bill, 1845; Excise Duties Bill, 1854 (Two Instructions); Stamp Duties Bill, 1859; Customs and Inland Revenue Bill, 1871, but this bill was withdrawn, on account of an irregularity, upon its introduction. Hans. Deb. 9th and 11th May 1871; 132 Com. J. 112, &c.

[2] 57 Hans. Deb. 3rd Ser. 458.

[3] See *supra*, p. 574.

[4] Paper Duty Repeal Bill, 1860, cl. 2.

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proposal should originate in committee, as it was equivalent to an increase of charge upon all importers of sugar who desired to export it.[1]

Questions of amount of duties on report.

Doubts have been sometimes entertained whether, on the report of resolutions from a committee, by which duties are reduced, it be regular to propose any amendment by which such reductions would be negatived, or the amount of reduction diminished. It has been contended that such an amendment would, in effect, increase a charge upon the people, which can be done in committee only: but it is clear that if the amendment were made, it would merely leave unchanged the duty existing by law, or would reduce it; and that the charge upon the people would not be increased. It would, indeed, be an anomalous form to report such resolutions to the house at all, unless the house could disagree to or amend them, and there are numerous cases in which amendments of this character have been proposed, without objection, on the report.[2]

When committee on bill may increase a charge.

In the same manner it is competent for the committee on a bill for reducing taxes, to raise a tax beyond the amount proposed by the bill, and previously agreed upon by a committee and by the house, provided the amount be not raised higher than the existing tax authorised by law. On the 19th March 1845, resolutions were reported from a committee on the Customs Acts, by which the import duties on glass were reduced, and certain lower rates of duty imposed from and after the expiration of excise duties on British glass (also proposed to be reduced in that session), and until the 10th October 1846, after which further reductions were to take effect. An instruction was given to the gentlemen already appointed to bring in a Customs Duties Bill, to make provision therein pursuant to these resolutions. In the committee on the bill it was proposed to postpone the period at

[1] Votes, 26th May 1865.

[2] Customs Acts Report, 15th, 16th, and 17th March 1846; 101 Com. J. 323. 335. 349.

which such reductions of duty were to take place:[1] but it was questioned by some whether such an amendment was admissible, as it would have the effect of continuing a charge upon the people for a longer time than the committee had voted and the house had agreed to. It was decided, however (privately), by Mr. Speaker, after full consideration, that an amendment of that nature was perfectly regular.[2] A bill for the reduction of taxes, as already stated, need not originate in a committee: but as Customs Duties Bills affect trade, they have been, on that account, founded upon resolutions of committees, even when all the duties affected by them have been reduced.[3] So long, therefore, as an existing tax is not increased, any modification of the proposed reduction may be introduced in the committee on the bill; being regarded as a question, not for increasing the charge upon the people, but for determining to what extent such charge shall be reduced. A committee on a bill may not repeal an exemption, and so increase a duty, until it has been previously voted in a committee, and agreed to by the house.[4]

Distinction in the case of a new tax.

But a clear distinction must always be observed between the case of a tax for the service of the year, and a proposed diminution of a tax or charge already existing. If a new tax were imposed, or a temporary tax continued for the service of the year, in the committee of ways and means, or other committee, and agreed to by the house, the committee on the bill would unquestionably have no right to increase it: but where a permanent tax is merely proposed to be diminished, a proposition in committee on the bill to modify that diminution does not increase the charge upon the

[1] Votes, 1845, p. 503.

[2] The same principle was afterwards acted upon in the Sugar Duties Bill, 1848.

[3] See proceedings in Committee on Customs, &c. Acts, 1st July 1853, by which the advertisement duty, proposed to be lowered from 1*s.* 6*d.* to 6*d.* was finally reduced to 0; 108 Com. J. 640, and Debates.

[4] Stamp Duties Bill, 1854; 109 Com. J. 330.

people. There can be no doubt that a committee is entitled to leave out of a bill portions of the resolutions upon which the bill is founded; and such an omission may leave a duty unchanged, and thus raise it above the amount previously agreed to by the committee of the whole house, and by the house itself. And it would seem difficult to maintain a distinction, in principle, between such a case as this, and an amendment which merely modifies the resolutions. It must be admitted, however, that the rule is not devoid of difficulties (more especially when the Treasury have already given effect to the resolutions of the house), and, though supported by precedent, it has not been uniformly approved by parliamentary authorities.

When a bill is to reduce duties, but some are increased.

So strictly is the rule enforced, which requires every new duty to be voted in committee, that even where the object of a bill is to reduce duties, and the aggregate amount of duties will, in fact, be reduced, yet if any new duty, however small, be imposed, or any existing duty be increased in the proposed scale of duties, such new or increased duty must be voted in a committee, either before or after the introduction of the bill.

Appropriation Act.

When the supplies for the service of the year have all been granted, the committee of supply discontinues its sittings: but care must be taken not to close the committee until all the necessary votes have been taken; for, if designedly closed, it can only be regularly re-opened by a demand for further supplies from the Crown, by message, or the communication of additional estimates.[1] When the committee of supply is closed, the financial arrangements are still to be completed, by votes in the committee of ways and means. That committee authorises the application of money from the consolidated fund, and the ways and means to meet the several grants and services of the year; and a bill is ordered to carry its resolutions into effect. This is known

[1] 3 Hatsell, 168 *et seq.*; and Com. J., 6th March 1706; 20th July 1715; 16th June 1721; 18th April 1748; 31st July 1807.

as the Consolidated Fund Bill, or more generally as the Appropriation Bill. It had been customary to give an instruction to the committee on this bill to receive a clause of appropriation: but, in 1854, this form was discontinued;[1] and, according to the present practice, a bill is at once ordered to apply a sum out of the consolidated fund, and to appropriate the supplies granted during the session.[2] The bill enumerates every grant that has been made during the whole session, and authorises the several sums, as voted by the committee of supply, to be issued and applied to each separate service.

Expenditure not to exceed grants.

On the 30th March 1849, the House of Commons agreed to a resolution concurring in the opinion expressed by the lords of her Majesty's Treasury, that "when a certain amount of expenditure for a particular service has been determined upon by Parliament, it is the bounden duty of the department which has that service under its charge and control to take care that the expenditure does not exceed the amount placed at its disposal for that purpose."[3] By a clause in the annual Appropriation Act, however, where delay would be detrimental to the public service, the Treasury may authorise the application of the surpluses upon some votes to the deficiencies upon others, in the grants for the army and navy, provided the total grant to each department be not exceeded; and a statement is required to be laid before the House of Commons, showing all the cases in which such authority has been given, with copies of the representations made upon the subject.[4] And every diversion of the original votes is subsequently sanctioned by a resolution of a committee of the whole house, and by a clause of the Appropriation Act. The control of Parliament over the expenditure of the annual grants is further aided by the machinery of the Exchequer and Audit Departments Act, 1866, and by the standing

[1] 109 Com. J. 479. A day was saved by this arrangement.

[2] 110 Ib. 443; 112 Ib. 403, &c.

[3] 104 Com. J. 190.

[4] 25 & 26 Vict. c. 71, s. 26.

committee of public accounts. Increased strictness has also been lately enforced in regard to the public accounts; and where grants are not expended within the financial year they are re-voted, in whole or in part, as the case may be, in the estimates of the following year.[1] And by a Standing Order of the 3rd April 1862, amended 28th March 1870, a standing "committee of public accounts," consisting of eleven members, is nominated at the commencement of every session, "for the examination of the accounts, showing the appropriation of the sums granted by Parliament, to meet the public expenditure."

Committee of public accounts.

It has been ruled that debates and amendments upon the different stages of the Appropriation Bill are to be governed by the same rules as those applicable to other bills; and must, therefore, be relevant to the bill, or some part of it,[2] instead of being allowed the same latitude as that practised on going into the committees of supply and ways and means: but as the grants comprised in the bill are of great variety, a wide range of discussion is sometimes founded upon it, without exceeding the limits of relevancy.[3]

Debates on Appropriation Bill.

When the Appropriation Bill has passed both houses, and is about to receive the royal assent, it is returned into the charge of the Commons, until that house is summoned to attend her Majesty, or the lords commissioners, in the House

Royal assent to Appropriation Act.

[1] See Reports of Select Committee on Public Accounts, 1861 and 1862.

[2] On the 26th June 1865, a member was restrained from speaking upon the tenure of land in Ireland, upon the third reading of the Appropriation Bill. 180 Hans. Deb. 3rd Ser. 836.

[3] 143 Hans. Deb. 3rd Ser. 558. 641. 12th April 1859 (Admiralty Board); 153 Ib. 1626. 23rd July 1863 (Foreign Relations). 21st July 1864 (Balance of Power). 26th June 1865 (Irish Constabulary). 14th August 1867 (Turkey and Greece). 5th August 1870 (Fortifications, and State of the Navy). 8th August 1872 (Kew Gardens). 11th August 1876 (Outrages in Bulgaria); on the 12th, Rules explained by Mr. Speaker; 231 Hans. Deb. 3rd Ser. 1160. 1190; Mr. Speaker Brand's Note-Book. Discussion on murder of Mr. Ogle, on third reading of Appropriation Bill, August 1878. 15th August 1882, on going into committee (War in Egypt); 137 Com. J. 482. 16th August, on third reading (Egyptian budget); Ib. 484.

of Peers; when it is carried by the Speaker to the bar of the House of Peers, and there received by the clerk of the Parliaments, for the royal assent. This is ordinarily on the day appointed for the prorogation of Parliament; and when her Majesty is present in person, the Speaker prefaces the delivery of the money bills with a short speech, concerning the principal measures which have received the assent of Parliament during the session, in which he does not omit to mention the supplies granted by the Commons. The money bills then receive the royal assent before any of the other bills awaiting the same ceremony, and the words in which it is pronounced acknowledge the free gift of the Commons: "*La reyne remercie ses bons sujets, accepte leur benevolence, et ainsi le veult.*" But on several occasions, when special circumstances have demanded an adjournment, instead of a prorogation, the royal assent has nevertheless been given to the Appropriation Act; and on the meeting of Parliament, after the adjournment, the outstanding business has been proceeded with. And as the money bills have been passed, and the committee of supply closed, the special sitting has then been held, without any disturbance of the financial arrangements of the year.[1]

Adjournments after passing of Appropriation Acts.

Although every grant of money must be considered in a committee of the whole house, it is not usual to vote, in the committee of supply, such grants as do not form part of the supplies for the service of the current year. Any issue of money out of the consolidated fund for any extraordinary purpose,[2] for salaries created by a bill, or for any other

Grants voted otherwise than in committee of supply.

[1] On the 12th October 1799, the Appropriation Act received the royal assent, when both houses adjourned till the 21st January 1800. On the 24th July 1820, the Appropriation Act received the royal assent: and on the 26th, the Commons adjourned, and continued its adjournments until the 23rd November, transacting ordinary business, as occasion arose. On the 17th August 1882, the Appropriation Act received the royal assent; and on the following day both houses adjourned until the 23rd October; when the autumn sitting continued until the 2nd December. See also *supra*, p. 52, *n.*

[2] West India relief, 1832; 87 Com. J. 452. Slavery, 20,000,000*l.* grant, 1833; 88 Ib. 482. Sardinia and Turkish Loans, 1855 and 1856; 110 Ib. 142. 406; 111 Ib. 273. Fortifications and Works, 1860, 1862, 1863, and 1867; 115 Ib. 403, &c.

charges of whatever character, not being for the service of the year, after the Queen's recommendation has been signified, is authorized by a committee of the whole house, to whom the matter is specially referred; and on their report a bill is ordered, or a clause is inserted in a bill already before the house. As an example of this distinction, the proceedings upon the Queen's message in 1857, relating to the approaching marriage of the Princess Royal, may be referred to. The marriage portion, which was paid out of the revenues of the year, was voted in the committee of supply: but the annuity out of the consolidated fund, in a committee of the whole house.[1] In adopting this course, former precedents,[2] as well as the proper rules of the house, were consulted; and in later cases the same course has been followed.[3]

Addresses for public money.

Another mode of originating a grant of money without the intervention of the committee of supply, is by an address to the Crown for the issue of a sum of money for particular purposes, with an assurance "that this house will make good the same.[4] According to the strict rules of the house, this proceeding ought only to be resorted to when the committee of supply is closed, at the end of the session; for otherwise the more regular and constitutional practice is to vote the sum in that committee. As this form of motion makes the royal recommendation unnecessary, it is often resorted to by

[1] 112 Com. J. 170. 175.

[2] 3 Hatsell, 172, and *n.*; 67 Com. J. 377. 380; 69 Ib. 254 (Duke of Wellington). Princess Royal, 1797; 52 Com. J. 533. 544. Princess Charlotte, 1816; 71 Com. J. 220. On the 20th May 1791, an annuity was granted to the Duke of Clarence in the committee of supply, which was not a regular proceeding.

[3] Princess Alice, Prince and Princess of Wales, Princess Helena, and Princess Louise.

[4] 83 Com. J. 716, &c. 21st May 1811, the Commons addressed the Prince Regent to pay Mr. Palmer's arrears of percentage, amounting to 54,000*l.* The Lords took notice of this vote, for payment of a debt which they had denied to be due. The Prince Regent returned an answer declining to issue the money, being the first instance of the kind. A motion by Mr. Whitbread to censure ministers for this answer was negatived. 66 Com. J. 383; 20 Hans. Deb. 1st Ser. 343; Lord Colchester's Diary, ii. 332, 333. See also Ib. 152-156.

members who desire grants which are not approved by the ministers of the Crown.

By Standing Order, 22nd February 1821, "This house will not proceed upon any motion for an address, to the Crown, praying that any money may be issued, or that any expense may be incurred, but in a committee of the whole house."[1] In compliance with this order, and with the resolution of the 18th February 1667, now made a Standing Order, that the consideration and debate of motions for any public aid or charge should not be presently entered upon, the proper form to observe in proposing an address involving any outlay is to move, 1st, "That this house will on a future day resolve itself into a committee of the whole house, to consider of an address, &c. &c.;" and if that be carried, 2ndly, To move that address, in committee, on the day appointed by the house.[2] In this form addresses have been moved for public monuments to deceased statesmen.[3] If a motion for an address for public money were submitted to the house in any other manner, it would be irregular for the Speaker to propose the question to the house.[4] So strictly, indeed, has this rule been enforced, that it has been held to apply to an address to the Crown, to offer a reward for the apprehension of a witness who had absconded.[5] In 1870, an address to the Crown for the issue of gun metal for a statue to Viscount Gough having been carried as an amendment, on going into committee of supply, the order for the address was afterwards discharged, and another address was agreed to with all the proper formalities.[6]

Taxes imposed by these methods.

As grants of money may be sanctioned by these methods,

[1] 76 Com. J. 101.

[2] Mirror of Parl. 1840, pp. 3244. 4179 (Church Extension). 98 Com. J. 415, &c.

[3] Sir R. Peel, 1850; 105 Com. J. 512. Viscount Palmerston, 1866; 121 Ib. 100. Earl of Beaconsfield, 1881; 136 Ib. 230. Addresses for monuments to Lord Chatham in 1778, and Mr. Pitt in 1806, were voted without a committee, being before the date of the Standing Order.

[4] 98 Com. J. 321 (Danish claims).

[5] St. Alban's case, 1851; 106 Com. J. 189.

[6] 125 Ib. 355. 362.

otherwise than in committee of supply, so all taxes are not necessarily imposed in the committee of ways and means. The original intention of this committee was to vote all ways and means for the service of the year; and when taxes were ordinarily appropriated to specific services, its province was sufficiently defined: but since the practice has arisen of carrying the produce of all taxes to one general consolidated fund, the office of the committee of ways and means is not capable of so distinct a definition. All annual or temporary duties, and other taxes which are to take effect immediately, for purposes of revenue, are obviously subjects proper for the consideration of this committee; but the same rule is not always applicable to taxes of a more permanent and general nature.

posed otherwise than in committee of ways and means.

The best illustration of this distinction will be found in the course adopted by the house, in reference to the sugar duties, which, until 1846, being annual duties, had always been voted in the committee of ways and means. In that year they were revised in that committee; but were then made permanent, instead of annual duties, in order to adjust gradually the discriminating duties upon foreign and colonial sugars. In 1848, a further revision of the duties was proposed in a committee of the whole house, and not in the committee of ways and means, as on former occasions; and it was stated in debate, that this course was adopted, after full consideration, because the duties were now permanent.[1] Every tax, indeed, whether it be permanent or not, is practically for the service of the current year, so long as it continues to be levied: but it may be desirable to alter it for purposes unconnected with the actual condition of the revenue. This distinction is generally observed, and it is the prevailing custom to confine the deliberations of the committee of ways and means to such taxes as are more distinctly applicable to the immediate exigencies of

Sugar duties.

Annual and permanent taxes.

[1] Question of Mr. M. Gibson, and Lord J. Russell's answer, 30th June 1838 (not reported in Hansard).

the public income: and to consider, in other committees of the whole house, all fiscal regulations, and alterations of permanent duties, not having directly for their object the increase of revenue. Thus general alterations of the duties of customs, excise, stamps, and taxes, have been proposed in committees of the whole house;[1] but additions to these duties for the express purpose of supplying deficiencies in the annual revenue, have been considered in the committee of ways and means.[2] This practice, though not without exceptions,[3] has been sufficiently observed to establish a general rule, that, whenever the form of a motion points to taxation as an immediate source of revenue, it ought properly to be offered in the committee of ways and means.

On the 16th May 1861, objection was raised that some of the resolutions of the committee of ways and means, on which the Customs and Inland Revenue Bill was founded, ought not to have originated in that committee, as extending beyond the current financial year: but the Speaker overruled the objection, as the resolutions, though embracing a further period, also provided for the service of the year.[4]

Bills of aid and supply.

A bill founded upon a resolution of the committee of ways and means is drawn in the form of a bill of aid and supply; but a bill founded upon the resolution of another committee is generally prepared, and assented to by the Crown in the ordinary manner; and this circumstance may sometimes serve to indicate the proper course of proceeding, when it is doubtful in what committee a bill should originate.

[1] 92 Com. J. 499, 500; 97 Ib. 264.

[2] 95 Ib. 351. 415. Property tax and inhabited house duty, 1852–53; 108 Ib. 187. But in 1784, the house duty had been increased in a committee on the Smuggling Acts; 40 Ib. 58. 245. 24 Hans. Parl. Hist. 1008.

[3] In 1853, an increase of the Scotch and Irish spirit duties was proposed in a committee on Customs, &c. Acts, to avoid delay, which would have caused a loss of revenue; 108 Com. J. 428.

[4] 162 Hans. Deb. 3rd Ser. 2101.

CHAPTER XXII.

ISSUE OF WRITS, AND TRIAL OF CONTROVERTED ELECTIONS: BRIBERY AND CORRUPT PRACTICES.

Purport of this chapter.

THE law of elections, as declared by various statutes,[1] by the decisions of committees of the House of Commons, and of election judges, has become a distinct branch of the law of England. It is, in itself, of too comprehensive a character to admit of a concise analysis for the general purposes of this work, and it has already been collected and expounded, in all its details, by many valuable treatises. But as the issue of writs, and other matters concerning the seats of members, form an important part of the functions of the House of Commons, an outline of these proceedings, apart from the general law in reference to elections, cannot be omitted.

Issue of writs.

Whenever vacancies occur in the House of Commons, from any legal cause, after the original issue of writs for a new Parliament by the Crown, all subsequent writs are issued out of chancery, by warrant from the Speaker, and, when the house is sitting, by order of the House of Commons. The most frequent causes of vacancy are, the death of members, their elevation to the peerage, the acceptance of offices under the Crown, and the determination of election judges that elections or returns are void, upon any of the grounds which, by law, avoid them.

Vacancies during a session.

When the house is sitting, and the death of a member, his elevation to the peerage,[2] or other cause of vacancy, is known, a writ is moved by any member, and on being seconded by

[1] In 1850, there were upwards of 240 statutes relating to elections, exclusive of acts for the trial of controverted elections, some few of which have since been repealed. See Author's pamphlet on the Consolidation of the Election Laws, 1850.

[2] See 26 Hans. Deb. 3rd Ser. 839, 11th March 1835; 2 Hatsell, 65, *n.*, 393–397.

another, Mr. Speaker is ordered by the house to issue his warrant for a new writ for the place represented by the member whose seat is thus vacated. But where a vacancy has occurred prior to, or immediately after, the first meeting of a new Parliament, the writ will not be issued until after the time limited for presenting election petitions.[1] Nor will a writ be issued, if the seat which has been vacated be claimed on behalf of another candidate. In December 1852, several members accepted office under the Crown, against whose return election petitions were pending. After much consideration, it was agreed that where a void election only was alleged, a new writ should be issued;[2] and again, in 1859, and in 1880, the same rule was adopted.[3] But where the seat is claimed, it has been ruled that the writ should be withheld until after the trial of that claim:[4] or until the petition has been withdrawn.[5] In 1859, Viscount Bury accepted office under the Crown, while a petition against his return for Norwich, on the ground of bribery, was pending; and, as his seat was not claimed, a new writ was issued. Being again returned, another petition was presented against his second election, and claiming the seat for another candi-

Writs not issued while returns may be questioned.

Issue of writs, when election petitions are pending.

[1] By the Election Petitions Act, 1868, c. 6, the petition is to be presented within twenty-one days after the return has been made to the clerk of the Crown in Chancery. By sect. 49, in reckoning time for the purposes of this Act, Sunday, Christmas-day, and any day set apart for a public fast or thanksgiving, shall be excluded; and it has been held that Sundays are excluded from the computation of twenty-one days. Pease *v.* Norwood, 4 L. R., C. P. 235; Southampton case, 11th Jan. 1869. On the change of ministry, before the meeting of Parliament in December 1868, writs were issued for several of the new ministers on the 15th; but for those who had been returned for counties at a somewhat later date, writs were not issued until the 29th. And again, in 1874, after another change of ministry, writs were not issued for Buckinghamshire, and some other counties, for several days after the issue of writs for the boroughs, and for some counties where the returns had been made early.

[2] Southampton and Carlow writs, 29th Dec. 1852.

[3] Sandwich and Norwich writs, 22nd June 1859; 154 Hans. Deb. 3rd Ser. 450. 454. Chester writ, 3rd May 1880; 135 Com. J. 125.

[4] Athlone election, 1859.

[5] Louth election (Mr. Chichester Fortescue), 1866.

date. The petition against the first election came on for trial, and the committee reported that the sitting members, Lord Bury and Mr. Schneider, had been guilty, by their agents, of bribery at that election. By virtue of that report, Lord Bury, under the Corrupt Practices Prevention Act, became incapable of sitting or voting in Parliament, or, in other words, ceased to be a member of the house: but as a petition against his second return, and claiming the seat, was then pending, a new writ was not issued.[1] This position of affairs illustrated the propriety of issuing the writ, in the first case, on the acceptance of office by Lord Bury, as the rights of all parties were nevertheless secured. On the meeting of a new Parliament in November 1852, the seat of a deceased member was claimed: but the petition was withdrawn the day after the expiration of the time limited for receiving election petitions, and the writ was immediately issued.[2] The claim of one seat for any place will not interfere with the issue of a writ, on a vacancy occurring in the other.[3]

Vacancy by peerage.

If a member becomes a peer by descent, a writ is usually moved soon after the death of his ancestor is known; though, occasionally, some delay occurs in obtaining the writ of summons, which ought strictly to precede the issue of the writ,—that proceeding being founded upon the alleged fact that the member has been called up to the House of Peers.[4] On the 15th February 1809, the house being informed that no writ of summons had been issued to General Bertie, calling him to the House of Peers, as Earl of Lindsey, though a writ had been issued for the borough of Stamford, ordered a supersedeas of the writ.[5] On the 10th January 1811, a new writ was issued in the room of Lord Dursley, "now Earl of Berkeley," without stating, as usual, that he

[1] 2nd Aug. 1859; 155 Hans. Deb. 3rd Ser. 865.

[2] Durham election (Mr. Grainger); 108 Com. J. 161.

[3] Lichfield writ (Sir G. Anson), 1841; 96 Ib. 566. First Durham election petition, 1852-53.

[4] 74 Hans. Deb. 3rd Ser. 108 (Lord Abinger); 19th April 1844. Earl Powis, 103 Com. J. 162. Lord Panmure, 6th May 1852; 107 Ib. 193.

[5] 64 Ib. 49.

was called up to the House of Peers. His claim to the Berkeley peerage, however, not being admitted by the Lords, he afterwards sat as Colonel Berkeley, until created Lord Seagrave in 1831.[1] The same rule, however, does not extend to a peer of Scotland, to whom no writ of summons is issued. On the 21st February 1840, a new writ was issued for Perthshire, in the room of Viscount Stormont, "now Earl of Mansfield, and Viscount Stormont in the kingdom of Scotland," though it was allowed on all hands that no writ of summons had then been issued to his lordship, in respect of his English peerage.[2] And again, in 1861, a new writ was issued for Aberdeenshire, in the room of Lord Haddo, "now Earl of Aberdeen in the peerage of Scotland," before he had received his writ of summons in respect of his English peerage.[3] If a member be created a peer, it is often the practice to move the new writ when he has kissed hands; but sometimes not until the patent has been made out, or the *recepi* endorsed.[4] When it is advisable to issue the writ without delay, in the case of a member created a peer, and it is doubtful whether the seat be legally vacated, the member accepts the Chiltern Hundreds, before his patent is made out.

Precedence of motion for new writ.

A motion for a new writ ordinarily takes precedence of other motions, as a question of privilege, and is made without notice: but by a resolution of the 5th April 1848, "in all cases where the seat of any member has been declared void on the grounds of bribery or treating, no motion for the issue of a new writ shall be made without previous notice being given in the Votes;"[5] and when such a notice was dropped, it was required to be renewed like other dropped notices.[6] In

[1] 66 Com. J. 31; 18 Hans. Deb. 1st Ser. 807; Lord Colchester's Diary, ii. 306. 340.

[2] 95 Com. J. 105; 52 Hans. Deb. 3rd Ser. 435. A peer applies to the lord chancellor for his writ of summons, to whom he produces his father's marriage certificate, proofs that he is the eldest son, and such further evidence as may be required.

[3] 116 Com. J. 4.

[4] Lord Eddisbury sat until 15th May 1848, although his creation had appeared in the "Gazette" on the 9th May; 103 Com. J. 513.

[5] Ib. 423.

[6] Sligo writ, 28th June 1848; 99 Hans. Deb. 3rd Ser. 1289.

1853 and 1854, it was ordered that no such motion should be made without seven days' previous notice in the Votes;[1] and in succeeding sessions, until 1860, and again in 1866, 1874, 1875, 1880 and 1882, without two days' previous notice.[2] And since 1874, it has been ordered that such notices be appointed for consideration before the orders of the day and notices of motions.[3]

Supersedeas to writs.

If any doubt should arise concerning the fact of the vacancy, the order for a new writ should be deferred until the house may be in possession of more certain information; and if, after the issue of a writ, it should be discovered that the house had acted upon false intelligence, the Speaker will be ordered to issue a warrant for a supersedeas to the writ. Thus, on the 29th April 1765, a new writ was ordered for Devizes, in the room of Mr. Willey, deceased. On the 30th it was doubted whether he was dead, and the messenger of the great seal was ordered to forbear delivering the writ until further directions. Mr. Willey proved to be alive, and on the 6th May a supersedeas to the writ was ordered to be made out.[4] And in several more recent cases, when the house has been misinformed, or a writ has been issued through inadvertence, the error has been corrected by ordering the Speaker to issue his warrant to the clerk of the Crown, to make out a supersedeas to the writ.[5] A new writ having been issued on the 6th July 1880, for Berwick-upon-Tweed, in the room of Mr. Strutt, who had succeeded to the Belper peerage, a supersedeas to that writ was ordered on the 8th, as delays had arisen in completing the formalities incident to his being called to the upper house.[6]

Vacancies during the recess.

When vacancies occur by death, by elevation to the peerage,

[1] 108 Com. J. 315; 109 Ib. 388.

[2] 112 Ib. 283; 113 Ib. 168; 26th Jan. 1860; 115 Ib. 21; 121 Ib. 186; 129 Ib. 118; 135 Ib. 213; 137 Ib. 20.

[3] 129 Ib. 141; 130 Ib. 23; 135 Ib. 213; 137 Ib. 20.

[4] See 2 Hatsell, 80, *n.*; 16 Parl. Hist. 95. See also case of the city of Gloucester, 19th Dec. 1702.

[5] 64 Com. J. 48; 81 Ib. 223; 86 Ib. 134. 182; 106 Ib. 12 (Dungarvan writ).

[6] 253 Hans. Deb. 3rd Ser. 1918.

or by the acceptance of office, the law provides for the issue of writs during a recess, by prorogation or adjournment, without the immediate authority of the house, in order that a representative may be chosen without loss of time, by the place which is deprived of its member. By the 24 Geo. III. sess. 2, c. 26, amended by 26 Vict. c. 20, on the receipt of a certificate, under the hands of two members, that any member has died, or that a writ of summons under the great seal has been issued to summon him to Parliament as a peer,[1] either during the recess or previously thereto, the Speaker is required to give notice forthwith in the London Gazette (which is to be acknowledged by the publisher); and after six days from the insertion of such notice,[2] to issue his warrant to the clerk of the Crown to make out a new writ.

Speaker issues warrants.

But the Speaker may not issue his warrant during the recess; 1, unless the return of the late member has been brought into the office of the clerk of the Crown fifteen days before the end of the last sitting of the house; nor, 2, unless the application is made so long before the next meeting of the house, for despatch of business, as that the writ may be issued before the day of meeting;[3] nor, 3, may he issue a warrant in respect of any seat that has been vacated by a member against whose election or return a petition was depending at the last prorogation or adjournment.

Acceptance of office during the recess.

And, subject to the same provisions, by the 21 & 22 Vict. c. 110, the Speaker is required, on the receipt of a certificate from two members, and a notification from the member himself, to issue his warrant for a new writ, during the recess, in the room of any member who, since the adjournment or prorogation, has accepted any office whereby he has, either by

[1] See the form of the certificate in the Appendix. No writ of summons being directed to a Scotch or Irish peer, this act does not extend to such cases; Marquess of Tweeddale, Jan. 1879.

[2] Prior to 26 Vict. c. 20, this period had been fourteen days.

[3] That is to say, six days must elapse after the insertion of the notice, and then the writ can only be issued before the meeting of the house.

the express provision of any Act of Parliament, or by any previous determination of the House of Commons, vacated his seat. If, however, it should appear doubtful whether such office has the effect of vacating the seat, the Speaker may reserve the question for the decision of the house. This Act does not apply to the acceptance of the offices of steward of the Chiltern Hundreds, or of the manors of East Hendred, Northstead, or Hempholme, or of escheator of Munster. The acceptance of any of these offices, however, at once vacates the seat of a member, and qualifies him to be elected elsewhere, although no new writ can be issued for the place which has become vacant by his acceptance of office.

Speaker's appointment of members.

At the beginning of each Parliament the Speaker is required to appoint a certain number of members, not exceeding seven, and not less than three, to execute his duties in reference to the issue of writs, in case of his own death, the vacation of his seat, or his absence from the realm. This appointment stands good for the entire Parliament, unless the number should be reduced to less than three; in which case the Speaker is required to make a new appointment, in the same manner as before. This appointment is ordered to be entered in the Journals, and published in the London Gazette; and the instrument is to be preserved by the clerk of the house, and a duplicate by the clerk of the Crown.

Bankruptcy.

Originally by the 52 Geo. III. c. 144, s. 3, but now by the Bankruptcy Act, 1869, ss. 123, 124, similar powers are given to the Speaker, and to the members appointed by him, for issuing warrants, in the event of a seat having become vacant by the bankruptcy of a member.

To whom warrants directed.

For any place in Great Britain, the Speaker's warrant is directed to the clerk of the Crown in Chancery; and for any place in Ireland, to the clerk of the Crown and Hanaper, in Ireland.[1]

Delivery of writs.

On the receipt of the Speaker's warrant, the writ is issued

[1] 103 Com. J. 195.

by the clerk of the Crown, and transmitted through the post-office, in pursuance of the provisions of the 53 Geo. III. c. 89.[1] Neglect or delay in the delivery of the writ, or any other violation of the Act, is a misdemeanor; and in the event of any complaint being made, the house will also inquire into the circumstances.[2] In 1840, two writs were issued for Perthshire, instead of one, and the clerk of the Crown was examined in relation to the circumstances.[3]

Error in return.

If any error should appear in the return to a writ, such as a mistake in the name of the member returned;[4] or in the date of the return,[5] or in the division of the county for which the return is made,[6] evidence is given of the nature of the error, either by a member of the house, or some other person who was present at the election, or is otherwise able to afford information; and the clerk of the Crown is ordered to attend and amend the return. On the 18th August 1854, the mayor of Barnstaple annexed to the writ, which he returned to the clerk of the Crown, a certificate instead of an indenture; and on being made aware of his error, he forwarded, on the 25th August, an indenture dated on that day. As this date differed from that of the return, the clerk of the Crown did not conceive himself to be authorized to annex the indenture to the writ, but made a special certificate to the house of the facts.[7] This was taken into consideration on the 13th December, when the house ordered "that the members chosen to serve in the present Parliament for the borough of Barnstaple be called to the table of the house in order to be sworn;" and they were sworn accordingly.[8]

[1] By 37 & 38 Vict. c. 81, the duties of the pursuivant of the great seal in relation to writs were transferred to the messenger of the great seal.

[2] Glasgow writ, 1837; 92 Com. J. 410. 418.

[3] 95 Ib. 122. 127.

[4] Newport (Hants), 1831, Mr. Hope Vere; 86 Ib. 578. Kirkcaldy return, 1875, Sir George Campbell; 130 Ib. 165. Perth county return, 1878, Colonel Moray; 133 Ib. 53.

[5] Carlow county, 1841, "November" being inserted instead of "December;" 96 Com. J. 3.

[6] Northampton county, 26th Feb. 1846; 101 Ib. 207. Worcester county (Eastern division), 25th Feb. 1859; 152 Hans. Deb. 3rd Ser. 855.

[7] 110 Com. J. 4; Sess. Paper, 1854-5 (2).

[8] Ib. 7.

When no return is made.

If no return be made to a writ in due course, the clerk of the Crown is ordered to attend and explain the omission; when, if it should appear that the returning officer, or any other person, has been concerned in the delay, he will be summoned to attend the house; and such other proceedings will be adopted as the house may think fit.[1]

Offices under the Crown.

By the 26th sect. of the Act 6 Anne, c. 7, if any member "shall accept of any office of profit from the Crown, during such time as he shall continue a member, his election shall be and is hereby declared to be void, and a new writ shall issue for a new election, as if such person, so accepting, was naturally dead; provided, nevertheless, that such person shall be capable of being again elected." By virtue of this provision, whenever a member accepts an office of profit from the Crown, a new writ is ordered; and it is the usual practice to move the new writ when the member has kissed hands, instead of waiting for the completion of the formal appointment. On the 18th April 1864, a writ being moved for Merthyr Tydvil, in the room of Mr. Bruce, who had accepted the office of vice-president of the Committee of Council for education, it was objected that not having been sworn a privy councillor, he was not qualified to hold the office: but it was conclusively shown by the attorney-general that his seat had been vacated by the acceptance of office, and that the writ ought to be issued, as in the case of Mr. Lowe, who had accepted the same office, and of Mr. Hutt, who had accepted the office of vice-president of the Board of Trade, before they had been sworn of the privy council.[2]

When seats not vacated.

If one of her Majesty's principal secretaries of state should be transferred from one department to another, his seat is not vacated, as there is no such division of departments in the office of secretary of state, as to render them distinct offices

[1] Waterford writ, 1806; 61 Com. J. 169. 175; 6 Hans. Deb. 536. 562. 751. Great Grimsby, 1832; 86 Com. J. 758. 762, &c.; 72 Hans. Deb. 3rd Ser. 95. 159. 294. 460.

[2] 174 Hans. Deb. 3rd Ser. 1196. 1287.

under the Crown. And by the Reform Acts of 1867 and 1868, members holding certain offices are not required to vacate their seats on the acceptance of any other office there enumerated; and as this list comprises, or was intended to comprise, all the parliamentary offices under the Crown which vacate the seats of members, it may now be stated generally that any member who has already vacated his seat on the acceptance of one of these offices, is not required to vacate it, on the immediate acceptance of another.[1] But if he has held an office which did not vacate his seat, a new writ is issued on his acceptance of another office, by which his seat is vacated by law.[2] The resumption of an office which has been resigned, but to which no successor has been appointed, does not vacate a seat. As the secretaries of the treasury, the several under secretaries of state, and the secretary to the admiralty, do not hold office by appointment from the Crown, their seats are not vacated; nor would the acceptance of any other offices, of which the appointment does not vest directly in the Crown,[3] vacate a seat, except in cases where a special disqualification is created by statute.

Under-secretaries of state.

By the 22 Geo. III. c. 82, not more than two principal

[1] 30 & 31 Vict. c. 102, s. 52, and Sch. H. The like clauses and schedules are also comprised in the Scotch and Irish Reform Acts of 1868.

[2] On the 28th Feb. 1868, a new writ was issued for Northamptonshire, in the room of Mr. Hunt, secretary to the treasury, on his acceptance of the office of chancellor of the exchequer. Again, Mr. Ayrton, secretary to the treasury, vacated his seat in 1869, on accepting the office of first commissioner of works. Mr. Stansfeld having been a commissioner of the treasury in 1868, was afterwards appointed secretary to the treasury, and in March 1871, having accepted the office of commissioner for the relief of the poor, it became a question whether his seat was again vacated. A writ had been issued on his acceptance of one office in the schedule, and now he had accepted another; but the words of the act are "where a person has been returned as a member to serve in Parliament since the acceptance by him, from the Crown, of any office described in Sch. H. to this act annexed, the subsequent acceptance by him, from the Crown, of any other office or offices described in such schedule, in lieu of, *and in immediate succession the one to the other*, shall not vacate his seat;" and as he had occupied an intermediate office, not in the schedule, a writ was issued for Halifax on the 8th March 1871.

[3] 2 Hatsell, 44.

secretaries of state could sit in the House of Commons; and not more than one under secretary to each department would appear to have been admissible to the House of Commons under the 15 Geo. II. c. 22, s. 3; and as doubts were entertained whether more than two under secretaries could sit there, in practice there were, until 1855, only two under secretaries who held seats in that house at the same time.[1] But on the establishment of the secretary of state for war in 1855, an Act was passed to enable a third principal secretary, and a third under secretary, to sit in the House of Commons;[2] and again, in 1858, by the 21 & 22 Vict. c. 106, on the appointment of a fifth secretary of state for India, it was provided that four principal and four under secretaries may sit as members of the House of Commons at the same time.[3] In 1864, notice was taken that five under secretaries had been sitting in the house, in violation of the latter Act, and a motion was made that the seat of the fifth under secretary had been vacated. The house, however, referred the question to a committee, who reported that the seat of the under secretary last appointed was not vacated.[4] At the same time, as the law had been inadvertently infringed, it was thought necessary to pass a bill of indemnity.[5] An Act was also passed,[6] providing that in future, if, when there are four under secretaries in the house, another member accepts the office of under secretary, his seat shall be vacated, and he shall not be re-eligible, while four other under secretaries continue to sit in the house. If five secretaries or under secretaries are returned at a general election, none shall be capable of sitting and voting until the number is reduced to the statutory limit. And the same rule is further applied to other offices, of which the number may be limited by statute.

Vice-president of the

By the 30 & 31 Vict. c. 72, the office of vice-president of

[1] 2 Hatsell, 63, *n*.
[2] 18 & 19 Vict. c. 10.
[3] 21 & 22 Vict. c. 106, s. 4.
[4] 174 Hans. Deb. 3rd Ser. 1231, &c.
[5] 27 & 28 Vict. c. 21.
[6] Ib. c. 34.

Board of Trade.

the Board of Trade, which had been an office of profit from the Crown, was abolished after the next vacancy, and the office of parliamentary secretary to the Board of Trade substituted, which office shall not render the person holding it incapable of being elected, or of sitting or voting as a member, or vacate his seat if returned.

Offices under lord lieutenant.

By the 41 Geo. III. c. 52, s. 9, it is declared that offices accepted immediately or directly from the Crown of the United Kingdom, or by the appointment and nomination, or by any other appointment, subject to the approbation of the lord lieutenant of Ireland, shall vacate seats in Parliament.[1] But by the 6 Anne, c. 7, s. 28, the receipt of a new or other commission by a member who is in the army or navy, is excepted from the operation of the Act, and does not vacate his seat; and the same exception has been extended, by construction, to officers in the marines;[2] and to the office of master-general or lieutenant-general in the ordnance, accepted by an officer in the army;[3] and to military governments accepted by officers in the army.[4]

Military commands.

On the 9th June 1733, General Wade, having accepted the office of governor of the three military forts in Scotland, it was resolved "that the accepting a commission of governor or lieutenant-governor of any fort, citadel, or garrison, upon the military establishment, by a member, being an officer in the army, does not vacate his seat."[5] The acceptance of a commission in the militia does not vacate the seat of a member.[6]

Ambassador.

It has always been held that the office of ambassador, or other foreign minister, does not disqualify, nor

[1] The various offices which have been held to vacate seats, may be collected from the several general journal indexes, tit. "Elections;" and from Rogers on Elections, p. 235.

[2] 2 Hatsell, 45, *n.*

[3] 22 June 1742.

[4] Case of General Carpenter, appointed Governor of Minorca and Port Mahon, 1716; General Conway, appointed to the government of Jersey, 1772; 17 Parl. Hist. 538. See also 2 Hatsell, 48, 49, 52, *n.* 39 Com. J. 970; 54 Ib. 292.

[5] 22 Ib. 201.

[6] Militia Acts, 42 Geo. III. c. 90, s. 172; c. 91, s. 167; 49 Geo. III. c. 120, s. 34, &c. Militia Acts Consolidation Act, 1875; 38 & 39 Vict. c. 69.

its acceptance vacate the seat of a member:[1] but the acceptance of the office of consul or consul-general has been deemed to vacate a seat, though the member was considered to be re-eligible.[2] By 22 & 23 Vict. c. 5, it was declared that persons holding diplomatic pensions were not disqualified from being elected or sitting and voting in the House of Commons. And by 32 & 33 Vict. c. 15, pensions, compensations, or allowances for civil services, according to the provisions of the Superannuation Acts, do not disqualify the holder from being elected or sitting or voting as a member of the House of Commons.

Colonial governors and officers.

Another class of offices the acceptance of which vacates a seat, is that of colonial governors or deputy-governors, who, by the act of Anne, c. 25, are incapable of being elected, or of sitting and voting; and cannot, therefore, be re-elected.[3] In 1878, a new writ was moved for the county of Clare, in the room of Sir Bryan O'Loghlen, who, since his election, had accepted the office of attorney-general of Victoria: but as his seat had already been vacated in the colonial legislature on the acceptance of office, and it being doubtful whether his appointment was from the Crown or the governor, the matter was referred to a select committee. In the absence of Sir Bryan O'Loghlen, however, no decision was arrived at during the session.[4] In the following year

[1] 2 Hatsell, 22; 106 Com. J. 12; (Dungarvan writ). Great inconvenience arose from this construction of the law in 1869. In October of that year, Mr. Layard, member for Southwark, was appointed minister plenipotentiary at Madrid. His seat was not vacated by that appointment; nor under the 21 & 22 Vict. c. 110, could the Speaker issue a new writ during the recess, upon his acceptance of the Chiltern Hundreds. The vacancy, therefore, continued until after the meeting of Parliament, in February, and several candidates were canvassing the borough, for about four months before the election.

[2] 2 Hatsell, 54, *n.*

[3] Sir A. Leith Hay, Governor of Bermuda, 1838; Sir J. R. Carnac, Lieutenant-governor of Bombay, and Mr. Poulett Thomson, Governor-general of Canada, 1839; Sir H. Hardinge, Governor-general of India, 1844; Sir H. Barkly, Governor of British Guiana, 1849; Sir John Young, Lord High Commissioner of the Ionian Islands, 1855; Mr. Grant Duff, Governor of Madras, 1881, &c.

[4] 133 Com. J. 376. 415; report of committee.

this committee was re-appointed; and upon their report the house resolved, "that the office of attorney-general of the colony of Victoria is an office or place of profit under the Crown, within the meaning of the statutes in that behalf," and "that Sir Bryan O'Loghlen had vacated his seat."[1]

New offices under the Crown.

Under the 6 Anne, c. 7, new offices, or places of profit under the Crown, created since the 25th October 1705, and new offices in Ireland under 33 Geo. III. c. 41, not only vacate the seats of any members who accept them, but also render persons incapable of being elected, or of sitting and voting as members of the House of Commons.[2]

Postmaster-general.

The office of postmaster-general having been considered a new office or place of profit under the Crown, had usually been held by a peer: but by 29 & 30 Vict. c. 55, it was declared that the office should not be deemed a new office, disqualifying the holder from being elected, or sitting and voting as a member of the House of Commons; but that any member accepting the office, though eligible for re-election, should vacate his seat.

Counsel to Secretary of State for India.

In the Cambridge election case, in 1866, it was determined that the counsel to the Secretary of State for India in council was disqualified to be elected or to sit and vote, as holding a new office created under the Government of India Act, 1858;[3] and as Mr. Forsyth had sat and voted since his election, an Act was passed to indemnify him against any penalties which he might have incurred.[4]

Chiltern Hundreds.

It is a settled principle of parliamentary law, that a member, after he is duly chosen, cannot relinquish his seat;[5]

[1] 134 Com. J. 161; Hans. Deb. 25 April 1879.

[2] Mr. Whittle Harvey's case, 94 Com. J. 48; Mr. Forsyth's case, (Cambridge), 1866; and Major Jervis's case, 1866.

[3] 121 Com. J. 220. He had previously held the same office, under the East India Company.

[4] 29 & 30 Vict. c. 20.

[5] 1 Com. J. 724; 2 Ib. 201. In 1775, Mr. George Grenville moved for a bill to enable members to vacate their seats, and contended that this was part of the ancient constitution of the house; 18 Parl. Hist. 411.

and, in order to evade this restriction, a member who wishes to retire, accepts office under the Crown, which legally vacates his seat, and obliges the house to order a new writ. The offices usually selected for this purpose are those of steward or bailiff of her Majesty's three Chiltern Hundreds of Stoke, Desborough, and Bonenham; or of the manors of East Hendred, Northstead, or Hempholme; or of escheator of Munster;[1] which, though they have sometimes been refused,[2] are ordinarily given by the Treasury to any member who applies for them, unless there appears to be sufficient ground for withholding them; and are resigned again as soon as their purpose is effected.

These offices, indeed, are merely nominal: but as the warrants of appointment grant them "together with all wages, fees, allowances," &c., they assume the form of places of profit. All words, however, which formerly attached honour to these offices, have lately been omitted; and the discretion of the Treasury is thus enlarged in granting them to persons unworthy of the favour of the Crown, who may desire to vacate their seats in Parliament.[3]

Accepted by a member disqualified.

In the session of 1847-48, a member having had doubts suggested whether he had not been disqualified at the time of his election, as a contractor, thought it prudent not to take

[1] According to Hatsell, the practice of issuing a new writ, on the acceptance of the stewardship of the Chiltern Hundreds and other nominal offices, began about the year 1750; the first instance being that of Mr. John Pitt, on the 17th January 1750, and the next that of Mr. Lascelles, on the 17th March 1752. 2 Hatsell, 54, *n.*

[2] See letter of Mr. Goulburn to Viscount Chelsea, Parl. Paper, 1842 (544); and see 3 Lord Dalling, Life of Lord Palmerston, 103. In 1775, Lord North refused to give one of these offices to Mr. Bayly, who desired to stand for Abingdon, in opposition to a ministerial candidate, saying, "I have made it my constant rule to resist every application of that kind, when any gentleman entitled to my friendship would have been prejudiced by my compliance;" 18 Parl. Hist. 418, *n.* "The office of steward of the Chiltern Hundreds is an appointment under the hand and seal of the chancellor of the exchequer;" Lord Colchester's Diary, 175.

[3] Mr. Speaker Denison's Note-Book. The words omitted are "reposing especial trust and confidence in the care and fidelity of," &c.

his seat, in case of being sued for the penalties under the Act. He was, however, unwilling to admit his disqualification, which was extremely doubtful; and he accordingly applied for the Chiltern Hundreds. Some doubts were raised as to the propriety of allowing him to vacate his seat by this method: but it was agreed that as the time had expired for questioning, by an election petition, the validity of his return, and as the house had no cognizance of his probable disqualification, there could be no objection to his accepting office, which solved all doubts, and at once obliged the house to issue a new writ.[1]

In 1880, Mr. Dodson, elected at the general election in March for the city of Chester, afterwards accepted the office of President of the Local Government Board, and was re-elected without opposition. Meanwhile a petition had been lodged against his first election; and in July the election judges determined that his election was void, on the ground of bribery, by his agents. It was generally held that, by virtue of the 17 & 18 Vict. c. 102, and the Parliamentary Elections Act 1868, s. 46, he was thenceforth incapable of sitting for Chester in that Parliament. But as his second election had not been questioned, doubts were raised whether he had legally ceased to be a member, and was qualified to sit for another constituency. To remove all doubts upon this question, he accordingly accepted the Chiltern Hundreds, and was elected for Scarborough.

Cumulative offices.

The Act of Anne has, in some cases, been held not to apply to the acceptance of other offices of state, by gentlemen already holding office from the Crown. Thus, the acceptance of the paid offices of Lord Justice in England, and in Ireland, when held in conjunction with other offices of state, was ruled not to vacate seats in Parliament, as appears from the cases of Mr. Craggs, Mr. Walpole, and Lord Midleton.[2]

First Lord of the Treasury, and Chancel-

After the Revolution of 1688, the office of Lord High Treasurer being executed by commissioners, it was customary

[1] MS. note.

[2] Hatsell, 47.

for the First Commissioner (or Lord) of the Treasury to hold also the office of Chancellor of the Exchequer. Among other examples may be mentioned that of Sir R. Walpole in 1716, and again from 1721 to 1741; of Mr. Pitt from 1783 to 1801, and again in 1804 until his death; of Mr. Canning in 1827, and Sir Robert Peel in 1834. But as the two offices were generally accepted at the same time, no question arose as to the vacation of the seat. In 1770, however, Lord North, being then Chancellor of the Exchequer, accepted also the office of First Lord of the Treasury. On that occasion, no new writ was moved, nor was any doubt expressed as to the legal effect of the acceptance of this second office. Again, in October 1809, Mr. Spencer Perceval, while Chancellor of the Exchequer, succeeded the Duke of Portland as First Lord of the Treasury, but retained his former office. Doubts were expressed by Lord Redesdale, whether he had not vacated his seat: but Lord Chancellor Eldon and Mr. Speaker Abbot agreed that he had not; and no new writ was issued.[1] In August 1873, Mr. Gladstone, already First Lord of the Treasury, further assumed the office of Chancellor of the Exchequer. An active controversy ensued as to the legal consequences of this proceeding: but as Parliament was dissolved during the recess, the complicated questions involved in this case, including former precedents under the Act of Anne, and the due construction of the remedial provisions

lor of the Exchequer.

[1] 2 Lord Colchester's Diary, 214, 215. Lord Eldon wrote, 25th Dec. 1809, "I think Mr. P.'s seat is not void by any acceptance of any office of profit since his election. The Act has not said that if the king gives an increase of profit to a person already holding an office of profit, his seat shall be void, but only that if any person accepts an office of profit his seat shall be void."

"I think with you," wrote the Speaker, "that under the statute of Anne, there must be the concurrence of office and profit conjointly in the new grant, which is to vacate the seat: to re-accept the same office under a new commission has never, in practice, been held to vacate a seat: and the acceptance of a new annexation of profit to an office already in possession, has been considered equally free from the same consequences." 1 Walpole, Life of Spencer Perceval, 51–54.

of the Reform Act of 1867, did not become the subject of adjudication.

Offices without salary.

In January 1821, Mr. Bathurst accepted temporarily the office of President of the Board of Control, without its emoluments, in connexion with another cabinet office then held by him; and under those circumstances did not vacate his seat.[1] But in 1881, a new writ was issued for Leeds in the room of Mr. Herbert Gladstone, who had accepted a Lordship of the Treasury, without salary.[2]

Lord Warden of the Cinque Ports.

In 1861, Viscount Palmerston, while First Lord of the Treasury, accepted the honorary offices of Constable of Dover Castle and Lord Warden of the Cinque Ports, from which the salary formerly payable by the Crown had been withdrawn. Lord North and Mr. Pitt had vacated their seats on accepting these offices, together with the salary attached to them: but doubts were now entertained whether they could any longer be regarded as offices of profit. It appeared, however, that the warrant granted "all manner of wrecks," and of "fees, rewards, commodities, emoluments, profits, perquisites, and other advantages whatsoever, to the said offices belonging," including the occupation of Walmer Castle; and, after full consideration, it was determined that a new writ should be issued.[3]

Want of property qualification admitted.

A singular method of vacating a seat was that of Mr. Southey in 1826, who had been elected for Downton, during his absence on the Continent. His return was not questioned, but he addressed a letter to the Speaker, in which he stated that he had not the qualification of estate required by law.[4] The house waited until after the expiration of the time limited for presenting election petitions, and then issued a new writ for the borough.[5] A similar case occurred in 1847, when Mr. Cowan, member for Edinburgh, addressed a letter

Disqualification admitted.

[1] 3 Lord Sidmouth's Life, 339.
[2] 136 Com. J. 472.
[3] 116 Ib. 126; MS. memorandum.
[4] 82 Ib. 28.
[5] Ib. 108.

to the Speaker, on the 25th November,[1] stating that at the time of his election he had been disqualified, as being a party to a contract then subsisting with her Majesty's stationery office. At the expiration of fourteen days, when his seat could no longer be claimed by any other candidate, his letter was read, and a new writ ordered.[2] The same course was adopted, in 1874, by Mr. Ramsay, member for the Falkirk Burghs, on discovering that he held a small share in a contract with the Post Office.[3] On the 24th June 1880, a new writ was issued for Buteshire in the room of Thomas Russell, Esq., who having entered into a contract for the public service, at the time of his election, was incapable of being elected.[4]

Questions affecting the seats of members.

Whenever any question is raised, affecting the seat of a member, and involving matters of doubt, either in law or fact, it is customary to refer it to the consideration of a committee. Thus, in 1839, the cases of Mr. Wynn, who had accepted the stewardship of Denbigh,[5] and of Mr. Whittle Harvey, who had accepted the office of registrar of hackney carriages,[6] were referred to a select committee. Again, in 1848, the question whether Mr. Hawes had regularly taken the oaths, was referred to a committee;[7] and, in 1855, on a new writ being moved for Baron de Rothschild, on the ground that he had contracted for a Government loan, a committee was appointed to report whether Baron de Rothschild had vacated his seat, by reason of that contract.[8] In 1869, a committee was appointed to consider whether Sir Sydney Waterlow was disqualified from sitting and voting, under the statute 22 Geo. III. c. 45, relating to contractors. And in 1878 and 1879, a committee was appointed to consider whether Sir Bryan O'Loghlen had vacated his seat for the county of Clare, by the acceptance of the office of

[1] 103 Com. J. 17.
[2] 8th December 1847; 103 Ib. 102.
[3] 19th March 1874; 129 Ib. 12.
[4] 253 Hans. Deb. 3rd Ser. 727.
[5] 94 Com. J. 58.
[6] Ib. 29.
[7] See *supra*, p. 217.
[8] 110 Com. J. 325.

attorney-general for the colony of Victoria.[1] This practice, in fact, extends to members whose seats are called in question by any member of the house, or otherwise, the same protection as that afforded in the case of controverted elections.

Members vacating to be re-elected.

By the law of Parliament, a member sitting for one place may not be elected for another: but must vacate his seat by accepting the Chiltern Hundreds, or some other office under the Crown, in order to be eligible as a candidate. Sir Fitzroy Kelly, solicitor-general, having been returned for Harwich on the 15th April 1852, immediately afterwards announced himself as a candidate for East Suffolk, the election for which county was appointed to be held on the 1st May. He had been returned for Harwich without opposition, yet on the 29th April a petition was lodged against his return, in the hope of preventing the Treasury from granting him the Chiltern Hundreds. But as his seat was not claimed, he at once received the required appointment; and was returned for East Suffolk, and took his seat again,—before a new writ had been issued for Harwich.[2] Again, in February 1865, The O'Donoghue, being member for Tipperary, offered himself as a candidate for Tralee: but before the day of election, he qualified himself to be elected by accepting the Chiltern Hundreds.[3] In 1878, Mr. Wingfield Malcolm, member for Boston, accepted the Chiltern Hundreds, in order to qualify himself as a candidate for the county of Argyll.[4]

Petitioning candidates eligible.

At one time it was doubted whether a candidate claiming a seat in Parliament by petition, was eligible for another place before the determination of his claim: but it was resolved, on the 16th April 1728, "that a person petitioning, and thereby claiming a seat for one place, is capable of being

[1] 134 Com. J. 86; and see *supra*, p. 707.

[2] The entry in the Votes is as follows:—"Sir Fitzroy Kelly having, since his return for the borough of Harwich, accepted the office of steward of her Majesty's manor of Hempholme, in the county of York, and being returned for the eastern division of the county of Suffolk, took the oaths and his seat;" Votes, 1852, p. 285.

[3] 120 Com. J. 4. 50.

[4] 133 Ib. 402.

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elected and returned, pending such petition."[1] In case the petitioner should, after his election, establish his claim to the disputed seat, the proper course would appear to be to allow him to make his election for which place he would serve, in the same manner as if he had been returned for both places, at a general election.[2]

Trial of controverted elections.

Another occasion for issuing new writs, is to give effect to the determination of a court upon the validity of an election; and this leads to the examination of the mode in which controverted elections have been tried and determined, according to law.

Formerly by votes of the house.

Before the year 1770, controverted elections were tried and determined by the whole House of Commons, as mere party questions, upon which the strength of contending factions might be tested. Thus, in 1741, Sir Robert Walpole, after repeated attacks upon his government, resigned at last, in consequence of an adverse vote upon the Chippenham election petition. "Instead of trusting to the merits of their respective causes," said Mr. Grenville, in proposing the measure which has since borne his name, "the principal dependence of both parties is their private interest among us; and it is scandalously notorious that we are earnestly canvassed to attend in favour of the opposite sides, as if we were wholly self-elective, and not bound to act by the principles of justice, but by the discretionary impulse of our own inclinations; nay, it is well known that in every contested election, many members of this house, who are ultimately to judge in a kind of judicial capacity between the competitors, enlist themselves as parties in the contention, and take upon themselves the partial management of the very business upon which they should determine with the strictest impartiality."[3]

Grenville Act.

Constitution of committees

In order to prevent so notorious a perversion of justice, the

[1] 21 Com. J. 136.

[2] This point was considered in 1849, when such a case seemed likely to occur: but there have been no precedents.

[3] See also 1 Cavendish, Deb. 476. 505; 1 May, Const. Hist. (7th ed.) 362.

under the Grenville Act.

house consented to submit the exercise of its privilege, to a tribunal constituted by law; which, though composed of its own members, should be appointed so as to secure impartiality, and the administration of justice according to the laws of the land, and under the sanction of oaths. The principle of the Grenville Act,[1] and of others which were passed at different times since 1770, was the selection of committees for the trial of election petitions by lot. By the last of these,[2] thirty-three names were balloted from the members present at the time, and each of the parties to the election was entitled to strike off eleven names, and thus reduce the number of the committee to eleven. Whichever party attended on the day appointed for a ballot, in the greatest force, was likely to have a preponderance in the committee; and the expedient of chance did not therefore operate as a sufficient check to party spirit, in the appointment of election committees. Partiality and incompetence were very generally complained of in the constitution of committees appointed in this manner; and in 1839, an Act was passed establishing a new system, upon different principles,—increasing the responsibility of individual members,—and leaving but little to the operation of chance.

Present system.

This principle was maintained, with partial alterations of the means by which it was carried out,[3] until 1868, when the jurisdiction of the house, in the trial of controverted elections, was transferred by statute, to the courts of law.[4]

Sessional orders.

At the commencement of each session the house orders,

"That all members who are returned for two or more places, in any part of the United Kingdom, do make their election for which of the places they will serve, within one week after it shall appear that there is no question upon the return for that place; and if anything shall come in question touching the return or election of any member, he is

[1] In 1773, the Grenville Act was made perpetual, but not without the expression of very strong opinions against the limitations imposed by it, upon the privileges of the house. See 17 Parl. Hist. 1071; also Lord Campbell's Chancellors, vol. vi. 98.

[2] 9 Geo. IV. c. 22.

[3] 11 & 12 Vict. c. 98.

[4] See *infra*, p. 721.

to withdraw during the time the matter is in debate; and, that all members returned upon double returns do withdraw till their returns are determined."

Members returned for two places.

1. The first part of this order regulates the manner of choosing for which place a member will sit, when he has been returned for more than one. When the time limited for presenting petitions to the court against his return has expired, and no petition has been presented, he is required to make his election within a week, in order that his constituents may no longer be deprived of a representative.[1] This election may either be made by the member in his place,[2] or by a letter addressed to the Speaker.[3] When a petition has been presented against his return for one place only, he cannot elect to serve for either.[4] He cannot abandon the seat petitioned against, which may be proved to belong of right to another, and thus render void an election which may turn out to have been good in favour of some other candidate; neither can he abandon the other seat; because if it should be proved that he is only entitled to sit for one, he has no election to make, and cannot give up a seat without having incurred some legal disqualification, such as the acceptance of office, or bankruptcy. Upon this principle, on the 24th May 1842, Mr. O'Connell, who had been chosen for the counties of Cork and Meath, elected to sit for the former, directly after the report of the election committee, by which he was declared to have been duly elected for that county.[5]

Members to withdraw.

2. The second part of the order is in accordance with the general rule of the house, which requires every member to withdraw, where matters are under discussion in which he is personally concerned.[6]

[1] 103 Com. J. 99, 100.

[2] Mr. O'Connell, 24th May 1842; Mr. Gathorne Hardy, 21st Feb. 1866.

[3] Mr. C. Villiers, Mr. Cobden, and Mr. John O'Connell, 8th Dec. 1847; Mr. Callan, 19th March 1874. Mr. Parnell, 11th May 1880, who having been returned for the city of Cork, and for the counties of Meath and Mayo, made his election to serve for the city of Cork; 135 Com. J. 128.

[4] Case of Mr. O'Connell, 1841; 96 Com. J. 564.

[5] 97 Com. J. 302.

[6] See *supra*, pp. 392. 423.

Double returns.

3. When there is a double return, there are two certificates endorsed on the writ,[1] and both the names are entered in the return books. Both members may therefore claim to be sworn, and to take their seats:[2] but after the election of the Speaker, neither of them can vote until the right to the seat has been determined; because both are, of course, precluded from voting where one only ought to vote; and neither of them has a better claim than the other. The practice of making such returns, though apparently prohibited in England by the 7 & 8 Will. III. c. 7, has been sanctioned by the law and usage of Parliament. In 1866, the numbers being equal, at the election for Helston, the returning officer returned one of the candidates only, instead of both; when after the report of an election committee, the house resolved "that according to the law and usage of Parliament, it is the duty of the sheriff or other returning officer in England, in case of an equal number of votes being polled for two or more candidates at an election, to return all such candidates."[3] In Scotland the making of double returns was directed by the Scotch Reform Act, 1832 (s. 33). In Ireland, on the other hand, a double return was expressly prohibited.[4] In order to avert double returns, as far as possible, it was provided by the Parliamentary and Municipal Elections Act, 1872, s. 2, that where there is an equality of votes between any candidates, and the addition of a vote would entitle a candidate to be declared elected, the returning officer, if a registered elector, may give such additional vote, but shall not, in any

[1] The ancient form of an indenture was abolished by the Parliamentary and Municipal Elections Act, 1872, 1st Sch. s. 44.

[2] Report, Oaths of Members, 1848, Q. 23–25. In 1852, three members were returned for Knaresborough. They were all sworn at the table, 8th Nov. and directed by Mr. Speaker to withdraw below the bar. In 1859, there were double returns for Knaresborough and Aylesbury, when the members were sworn in the same way. So also in May 1878, when there was a double return for South Northumberland.

[3] 121 Com. J. 436. 486.

[4] 35 Geo. III. c. 29, s. 13, and 4 Geo. IV. c. 55, s. 68, repealed by Parliamentary and Municipal Elections Act, 1872.

other case, be entitled to vote at an election for which he is returning officer.[1]

The house, also, agrees to the following resolutions, in condemnation of irregular practices to influence the freedom of election:—

Voting of peers.

"That no peer of this realm, except such peers of Ireland as shall for the time being be actually elected, and shall not have declined to serve for any county, city, or borough of Great Britain, hath any right to give his vote in the election of any member to serve in Parliament."[2]

Interference of peers and lords lieutenants.

"That it is a high infringement of the liberties and privileges of the Commons of the United Kingdom for any lord of Parliament, or other peer or prelate,[3] not being a peer of Ireland at the time elected, and

[1] In the South Northumberland election, 1878, the sheriff declined to give his casting vote, and made a double return.

[2] See debate in the Lords, 27th June 1853, in which it was laid down that peers were restrained from voting by immemorial usage, irrespective of these resolutions; 128 Hans. Deb. 3rd Ser. 791. Again, on the 5th July 1858, Lord Campbell said, "A peer has no right to vote by the common law of England, for the election of members of the House of Commons." "The resolution of the Commons only declares the common law." And again, "Since the Reform Bill, peers had frequently sought to register their votes for the election of members of the House of Commons, but the revising barristers had invariably, and most properly, refused to allow them." 151 Hans. Deb. 3rd Ser. 926, 927. In 1872, the legal question of the right of peers to vote, or to be entered upon the register of voters, was conclusively decided by the Court of Common Pleas. The Earl of Beauchamp and the Marquess of Salisbury having had their names struck off the register by the revising barrister, appealed to the Court of Common Pleas. The counsel for the noble appellants scarcely ventured to maintain their own case, and the court unanimously decided that, in law, as derived from authorities and from the determination of election committees, as well as by resolutions of the House of Commons, peers had no right to vote; and the appeal was accordingly dismissed with costs. 15th Nov. 1872; Times report, 16th Nov. 1872. This judgment must be held as conclusive. It is not by a resolution of the Commons, but by law, that a peer is disqualified. In No. 1 of the new series of Notes and Queries, Mr. Gairdner, in a learned and ingenious article, vainly endeavoured to support a different conclusion, founded on the Maldon case in 1698. In the election for Cambridge University, in Nov. 1882, certain peers claimed to vote, but their votes were disallowed by the Vice-Chancellor. See opinion of Attorney-General, 24th Nov. 1882; 275 Hans. Deb. 3rd Ser. 121.

[3] In February 1868, two bishops (one not being a lord of Parliament) were on the committee of one of the candidates for the University of Cambridge; but on notice being taken of the circumstance, they withdrew.

not having declined to serve for any county, city, or borough of Great Britain, to concern himself in the election of members to serve for the Commons in Parliament, except only any peer of Ireland, at such elections in Great Britain respectively, where such peer shall appear as a candidate, or by himself, or any others, be proposed to be elected;[1] or for any lord lieutenant or governor of any county to avail himself of any authority derived from his commission, to influence the election of any member to serve for the Commons in Parliament."[2]

Bribery.

"That if it shall appear that any person hath been elected or returned a member of this house, or endeavoured so to be, by bribery, or any other corrupt practices, this house will proceed with the utmost severity against all such persons as shall have been wilfully concerned in such bribery or other corrupt practices."[3]

Interference of ministers.

On the 10th December 1779, the Commons resolved that it was "highly criminal in any minister or ministers, or other servants under the Crown of Great Britain, directly or indirectly, to use the powers of office in the election of representatives to serve in Parliament, &c."[4]

Administration of the election law.

Under the Act 11 & 12 Vict. c. 98, for the trial of election petitions, the House of Commons acted as a court administering the statute law. Little discretion was left to it beyond that of interpreting the Act, and executing its provisions. Every enactment was positive and compulsory; the house, the

(Question of Mr. Whitbread, and Sir W. Stirling Maxwell's answer, 18th February.) Doubts were raised whether the resolution embraced a bishop not being a lord of Parliament: but it is clear that, having been agreed to in its present form in 1801 and 1802, it was intended to apply to the Irish peers and bishops not having seats in Parliament, under the Act of Union; and now extends to English bishops not yet summoned to the Lords, by later statutes. 56 Com. J. 25; 57 Ib. 376.

[1] See cases of Bishop of Carlisle, 16 Ib. 548; of Duke of Leeds, 68 Ib. 344; 26 Hans. Deb. 796. 989, &c. Debate, 14th Dec. 1847 (West Gloucester election); and precedents cited by the Attorney-General in regard to proceedings of the house against peers who have interfered in elections, 95 Hans. Deb. 3rd Ser. 1077; and Debate, 19th Feb. 1846, 83 Ib. 1167. Stamford borough case, 1848; 98 Ib. 932. 976. Earl of Cadogan, 23rd Feb. 1880; 250 Hans. Deb. 3rd Ser. 1198.

[2] For complaints made of lord-lieutenants interfering in elections, see Duke of Chandos, lord-lieutenant of Southampton, 37 Com. J. 507. 513. 538. 557. Duke of Bolton, a peer of Parliament, in the same election; 37 Ib. 530.

[3] In 1722, several persons were committed, as being principal promoters of riots at Coventry; 20 Ib. 60, 61.

[4] 37 Ib. 507.

committees, the Speaker, the members, were all directed to execute particular parts of the Act; and, in short, it is not possible to conceive a legislative body more strictly bound by a public law, over which it had no control, and in administering which it had so little discretion.[1]

Election Petitions, &c. Act, 1868, and later Acts.

But by the Election Petitions and Corrupt Practices at Elections Act, 1868, the trial of controverted elections, in England, was confided to the Court of Common Pleas at Westminster,[2] in Ireland, to the Court of Common Pleas at Dublin, and in Scotland, to the Court of Session. Petitions complaining of undue elections and returns were presented to those courts, instead of to the House of Commons, as formerly, within twenty-one days after the returns to which they related, and were tried by a judge of one of those courts, within the county or borough concerned. But by the Parliamentary Elections and Corrupt Practices Act, 1879, it was provided that the trial of election petitions should henceforth be conducted by two judges instead of one. The Court of Common Pleas having been merged, under the Judicature Acts, in the Queen's Bench Division of the High Court of Justice, petitions relating to elections in England are now presented to the latter court; and by the 44 & 45 Vict. c. 68, the judges for the trial of election petitions are to be selected from the Queen's Bench Division of the High Court of Justice. The house has no cognizance of these proceedings until their termination: when the judges certify their determination, in writing, to the Speaker, which is final to all intents and purposes.[3] The judges are also to report whether any corrupt practices have been committed with the knowledge

Election petitions to be tried by two judges.

Trial of election petitions.

[1] Its helplessness was remarkably illustrated in the cases of disputed election recognizances, in the session of 1847–48.

[2] Now the Queen's Bench Division of the High Court of Justice.

[3] On the 1st June 1874, Mr. O'Donnell (lately member for Galway) appeared at the bar and claimed to make a statement before the certificate of the judge, by which he was unseated, was read: but the Speaker informed him that it appeared from the judge's certificate that he was disqualified from sitting, and that he therefore was not entitled to be heard; 129 Com. J. 184.

and consent of any candidate; the names of any persons proved guilty of corrupt practices; and whether corrupt practices have extensively prevailed at the election. They may also make a special report as to other matters which, in their judgment, ought to be submitted to the house. Provision is also made for the trial of a special case, when required, by the court itself, which is to certify its determination to the Speaker.

The judges are also to report the withdrawal of an election petition to the Speaker, with their opinion whether the withdrawal was the result of any corrupt arrangement. All such certificates and reports are immediately communicated to the house by the Speaker, and are treated like the reports of election committees under the former system. They are entered in the Journals; and orders are made for carrying the determinations of the judges into execution. A report that corrupt practices have extensively prevailed, is equivalent to the like report from an election committee, for all the purposes of the 15 & 16 Vict. c. 57, for further inquiry into such corrupt practices. Where there is a double return, and notice is given by one of the parties that he does not intend to defend his return, a report is made to the Speaker, and the return is amended accordingly. This Act also makes further provision for the punishment of corrupt practices at elections.

In addition to these inquiries by election judges, if upon a petition to the House of Commons, presented within twenty-one days after the return, alleging the prevalence of corrupt practices at an election, an address of both houses for inquiry is presented, a commission is appointed under the 15 & 16 Vict. c. 57.

Proceedings of the house in matters of election.

A few words will suffice to explain the proceedings of the house, so far as its judicature is still exercised in matters of election. It being enacted by s. 50 of the Election Petitions &c. Act, that "no election or return to Parliament shall be questioned except in accordance with the provisions of this Act," doubts were expressed whether this provision would not

supersede the proper jurisdiction of the house, in determining questions affecting the seats of its own members, not arising out of controverted elections. It was plain, however, that this section applied to the questioning of returns by election petitions only. When controverted elections were tried by committees of the house, a sessional order required "all persons who will *question* any returns" to "*question* the same within fourteen days;" and under that order election petitions were received. In parliamentary language, therefore, to *question* a return was to controvert it by parties interested,—not to adjudge it by the house itself. During the continuance of that judicature, the house never attempted to interfere with controverted elections; but after the time had expired for receiving election petitions, it always held itself, not only free, but legally bound, to determine all questions affecting the seats of its members, as numerous precedents attest. Where returns were questioned, by petition, the matter was determined by the statutory tribunal: otherwise the house uniformly exercised its constitutional jurisdiction. And such continued to be the position of the house, after the judicature of its election committees had been transferred to the judges.

In the autumn of 1868, an election petition had been presented to the Court of Session in Scotland, complaining of the election of Sir Sydney Waterlow for the county of Dumfries, on the ground of his holding a government contract. In the ensuing session, however, this petition having been withdrawn, a select committee was appointed to "consider whether Sir Sydney Waterlow is disqualified from sitting and voting as a member of this house, under the statute 22 Geo. III. c. 45;" and on receiving the report of this committee, which declared him disqualified, a new writ was issued for the county of Dumfries.[1] Thus the very same question which might have been determined, upon petition, by an election judge, was adjudged by the house itself. The

[1] 124 Com. J. 12. 43. 82. 88.

house is, in fact, bound to take notice of any legal disabilities affecting its members, and to issue writs in the room of members adjudged to be incapable of sitting.[1] In 1870, O'Donovan Rossa, a convict then in prison, and sentenced to penal servitude for life, for felony under the Treason-Felony Act, had been returned as member for the county of Tipperary. The house took prompt action, and vindicated the honour of Parliament, by declaring his disqualification, and ordering the issue of a new writ.[2] Yet, even in such a case as this, it was contended that the house had become completely divested of the right of determining upon legal disqualifications affecting its own members. This argument, however, found no favour, it being justly said that it amounted to this,—that even a peer chosen to sit could not be excluded, and that a lunatic was to be suffered to continue a member. It might have been added that a new writ could not be issued in the room of a member accepting office, as the house was incapable of judging whether his seat had become vacant.

Case of O'Donovan Rossa.

Case of John Mitchel.

The case of John Mitchel, in 1875, further illustrates the position of the house, in relation to elections, and the legal disqualifications of its members. John Mitchel had been returned for the county of Tipperary without a contest. No question could, therefore, arise as to the election or return,—the sole matter for determination being the qualification of the member. It was notorious that he was an escaped convict, and had not completed the term of transportation, to which he had been sentenced. The facts of the case were proved; and his legal disqualification was clearly established to the satisfaction of the house.[3] A new writ was accordingly issued; and John Mitchel was again returned. But, on this occasion, there had been a contest; and the house therefore left the merits of the election and return to be determined

[1] 94 Com. J. 48; 103 Ib. 102.

[2] Hans. Deb. 10th Feb. 1870; and see *supra*, p. 39, *n*.

[3] Under 9 Geo. IV. c. 32, s. 3; 9 Geo. IV. c. 54, s. 33.

under the Election Petitions Act. Mr. Moore, the other candidate, having given due notice of the disqualification, proved his claim to the seat, and the return was amended accordingly.[1] And again, on the 28th February 1882, the house resolved that Michael Davitt, having been adjudged guilty of felony, and sentenced to penal servitude for fifteen years, is incapable of being elected or returned as a member.[2] In such cases as this the jurisdiction and duty of the house cannot be questioned, as the incapacity of a felon is expressly declared by statute.[3] A petition relating to an election, but not questioning the return of the sitting member, may properly be received.[4]

Proceedings of house upon determination of election trials.

Where it has been determined that the sitting member was not duly elected,[5] and that some other candidate was duly elected, and ought to have been returned, the clerk of the Crown is ordered to attend, and amend the return. This was formerly done by rasing out one name and inserting the other name instead thereof, which he accordingly did, at the table of the house.[6] But the form of return having been altered by the Parliamentary and Municipal Elections Act, 1872, it has since been usual to order the clerk of the Crown to amend the return by substituting one name for another.[7] In the case of a double return, the clerk of the Crown is ordered to attend and amend the return, by rasing out the name of one of the parties, and what relates to him in the

[1] 130 Com. J. 49. 52. 239; 222 Hans. Deb. 3rd Ser. 493.

[2] 137 Com. J. 77.

[3] 33 & 34 Vict. c. 22, s. 2. See Hans. Deb. 28th Feb. 1882, and especially the speech of the Attorney-General.

[4] 194 Hans. Deb. 3rd Ser. 1185.

[5] No notice can be taken of a determination until reported to the house. On the 27th May 1866, Mr. Mills, member for Northallerton, had been declared not duly elected; but no report had been made to the house, and the division on the second reading of the Reform Bill, was expected the same evening. As every vote was important, the question was canvassed whether Mr. Mills could vote. It was admitted that his vote could not be disallowed; but on taking counsel with his friends, he very properly desisted from voting. Mr. Speaker Denison's Note-Book.

[6] 112 Com. J. 364, 365. 367; 121 Ib. 189; 127 Ib. 261.

[7] Tipperary election, 27th March 1875; 130 Com. J. 236.

return.[1] When the election is void, a new writ is ordered, unless the house shall think fit to suspend its issue. In the case of the Wigton election, 1874, the judge reported that the Right Hon. John Young was duly elected: but it appearing that since his election he had been appointed a judge of the Court of Session, in Scotland, a new writ was issued.[2]

Special reports.

Where there have been special reports concerning bribery,[3] or riots at elections,[4] the conduct of returning officers,[5] undue influence, and spiritual intimidation,[6] the alteration of the poll,[7] the absence, misconduct, or perjury of witnesses,[8] defects or uncertainty in the law,[9] the propriety of suspending the writ,[10] or any other exceptional circumstances;[11] the house has taken such measures as were required by law or usage, or as appeared suitable to the occasion. It has been usual, in such cases, to order a copy of the judgment delivered by the judge, and the minutes of evidence, to be laid before the house.[12]

Proof of agency.

To facilitate inquiries into acts of bribery, committees were required by 4 & 5 Vict. c. 57 (since repealed), to receive general evidence of bribery, without prior proof of agency; and by the Election Petitions, &c. Act, 1868, unless the judge

[1] 97 Com. J. 203; 124 Ib. 173. Montgomery election, 1848; 103 Ib. 218. Dumbartonshire election, 1866; 121 Ib. 156. South Northumberland election, 1878; 133 Com. J. 333. The return by indenture was discontinued by the Parliamentary and Municipal Elections Act, 1872, and the certificate of return is now indorsed upon the writ.

[2] Votes, 1st and 2nd June 1874.

[3] Such reports have been held to be a ground of disqualification. Peterborough case, 1853; 108 Com. J. 826.

[4] Drogheda petition, 1857; 112 Ib. 383. Limerick City petition, 1859; 114 Ib. 338.

[5] Helston election, 1866; 121 Ib. 436.

[6] Mayo petition, 1857; 112 Ib. 307. Galway County election, 1872; 127 Ib. 258.

[7] 114 Ib. 330. 350; 115 Ib. 167.

[8] 115 Ib. 94. 167, &c.

[9] 93 Ib. 275; 97 Ib. 198; 98 Ib. 133; 103 Ib. 511. 965.

[10] Beverley case, 1859; 114 Ib. 359.

[11] 112 Ib. 292. 295. 369. 385; 114 Ib. 369; 121 Ib. 288.

[12] The short-hand writer of the House of Commons reports the evidence and judgment upon every trial of an election petition, but does not report proceedings on the withdrawal of a petition.

otherwise directs, any charge of a corrupt practice may be gone into, and evidence in relation thereto received, before any proof has been given of agency, on the part of a candidate, in respect of such corrupt practice.

Bribery by agent incapacitates.

By this mode of inquiry, the discovery of acts of bribery was, undoubtedly, much facilitated; and in the course of the evidence, proofs or implications of agency were elicited, which might not have arisen if the evidence had been confined, in the first instance, to the strict proof of agency. This provision did not apply to charges of treating;[1] but was expressly extended to such charges by the Corrupt Practices Act, 1863.[2] Since the passing of this Act, the seats of several members have been avoided by the acts of their agents; and committees and election judges have reported that sitting members have been, by or *through their agents*, guilty of bribery; and, at the same time, that there was no evidence to show that any acts of bribery were committed with their knowledge and consent.[3] Such determinations have been founded upon the principle, that though, without such proof, the member could not be sued for penalties,[4] yet, so far as his seat in Parliament is concerned, a proof of general agency for the management of an election is sufficient to make the principal civilly responsible for every unauthorised and illegal act committed by his agent, by which his own return had been secured. This principle, however, has been extended much further, and has been construed so as to attach some of the penalties of bribery to the principal, although such bribery has been committed by his agents, without his knowledge and consent. In 1842, the election of Mr. Harris for

[1] Bodmin case; Power, Rodwell, and Dew, 134. Leicester case; Ib. 176. Chester County case; Ib. 219. Second Horsham case; Ib. 250. Kidderminster case; Ib. 263: but see also Cambridge and Wigan cases; Barron and Austin, 184. 788. Aylesbury case; Power, Rodwell, and Dew, 271.

[2] 26 Vict. c. 29, s. 8; now repealed.

[3] 97 Com. J. 260. 279. 551; 121 Ib. 190. 251, &c. Barron and Austin, 401. 453. 584. 609. Power, Rodwell, and Dew, 45. 75. 1 O'Malley and Hardcastle, 11. 148; 2 Ib. 165, &c.

[4] Felton *v.* Easthope, 1822; Rogers, 390. 409. Hughes *v.* Marshall, 2 Tyr. 134.

Newcastle-under-Lyme was avoided, by reason of bribery, but the committee reported that "no evidence was given to show that these acts of bribery were committed with the knowledge and consent of Mr. Harris." Mr. Harris was re-elected, and petitioned against, and the committee determined, "that Mr. Harris having been declared, by a committee of the House of Commons, to have been guilty of bribery by his agents, at the previous election for the borough of Newcastle-under-Lyme, and that election having been avoided, was incapable of being elected at the election which took place in consequence of such avoidance."[1] In several later cases, a second election has been avoided on account of corrupt practices at a former election.[2] The same principle has also been extended to unsuccessful candidates at a previous election.[3] By the Corrupt Practices Prevention Act, 1854, s. 36, it was enacted, that if any candidate shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at an election, such candidate shall be incapable of being elected or sitting in Parliament for the same county, city, or borough, during the Parliament then in existence. And by sect. 46 of the Election Petitions and Corrupt Practices Act, 1868, the report of the judge on the trial of an election petition is to be deemed to be substituted for the declaration of an election committee. A further instrument for the detection of bribery has been found in the personal examination of the sitting members and candidates, under the new law of evidence.[4]

Corrupt Practices Act, 1854.

Sitting members examined.

Punishment of candidate guilty of personal bribery.

By s. 43 of the Election Petitions and Corrupt Practices Act, 1868, where it is found, by the report of an election judge, that bribery has been committed by or with the knowledge and consent of any candidate, such candidate shall be deemed to have been personally guilty of bribery, and his

[1] Barron and Austin, p. 564.

[2] Cheltenham and Horsham, in 1848; Norwich, in 1859; and see Rogers on Elections, 13th ed. 243.

[3] 2nd Cheltenham petition, and 2nd Horsham petition, 1848; 103 Com. J. 973. 1005; Power, Rodwell, and Dew, 225. 242.

[4] 14 & 15 Vict. c. 99.

election, if he has been elected, shall be void, and he shall be incapable of being elected to, and of sitting in, the House of Commons, for a period of seven years; and shall further be incapable, during that period, of being registered as a voter, and voting at any election in the United Kingdom; and of holding any office under 5 & 6 Will. IV. c. 76, or 3 & 4 Vict. c. 108, or any municipal office; and of holding any judicial office, and of being appointed, and of acting, as a justice of the peace.

Penalty for employing corrupt agent.

By s. 44 of the same Act, if any candidate is proved to have personally engaged at the election, as a canvasser or agent for the management of the election, any person whom he knows to have been, within seven years, found guilty of any corrupt practice, the election of such candidate shall be void. And by s. 45, any person other than a candidate, found guilty of bribery, in any proceeding in which, after notice of the charge, he has had an opportunity of being heard, shall, during a period of seven years, be incapable of being elected to and sitting in Parliament, and subject to the same civil disqualifications as a candidate found guilty of personal bribery.

Disqualifications of persons not candidates.

General corruption to be reported.

By the Corrupt Practices Act, 1863, the committee was required to report whether such corrupt practices have extensively prevailed. Formerly, when particular persons were proved, before election committees, to have been guilty of bribery, treating, and other corrupt practices, the house directed the attorney-general to prosecute them for such offences.[1] But by the same act, s. 9, it was provided, that when persons were reported guilty of bribery or treating, the report and evidence of a committee, or commission of inquiry, shall be laid before the attorney-general, with a view to his instituting a prosecution against such persons,

[1] In cases relative to Ireland, the Attorney-General for Ireland has been directed to prosecute; Sligo case, 1854; 109 Com. J. 159. Lisburn case, 19th June 1863. In the Dublin case, 1831, "the law officers of the Crown in Ireland were directed to take immediate measures for bringing to justice such persons as may have been guilty of bribing voters." 86 Com. J. 779.

if the evidence be, in his opinion, sufficient.[1] And this provision extends to reports of election judges, under the Election Petitions, &c. Act, 1868, s. 16; and thus the intervention of the house, in such cases, is now rendered unnecessary by the direct operation of the law.[2]

Writs suspended.

When general and notorious bribery and corruption have been proved to prevail in parliamentary boroughs, the house has frequently suspended the issue of writs,[3] with a view to further inquiry, and proceedings for the ultimate disfranchisement of the corrupt constituencies by Act of Parliament.[4]

[1] In the Wakefield case, after the report of a commission of inquiry, the attorney-general instituted a prosecution, without the directions of the house, the matter being no longer within the sole cognisance of the house.

[2] Galway County election, 1872; explanations of Attorney-General for Ireland, and debate, 23rd July 1872; 212 Hans. Deb. 3rd Ser. 1626.

[3] Liverpool, 1831; 86 Com. J. 458. 493. Warwick, 1833; 88 Ib. 611; 89 Ib. 9. 579. Carrickfergus, 1833; 88 Ib. 531. 599. Hertford, 1833; Ib. 578. 649. In the three last cases, the writs were further suspended until 15 days after the commencement of the next session; and in 1834, were again suspended until the dissolution in Dec. 1834. Meanwhile bills of disfranchisement, or for preventing bribery in these boroughs, were pending. Stafford, 1835; writ suspended until ten days after the commencement of the next session; and again in 1836 and 1837, until there was no prospect of passing a disfranchisement bill; see debate, 13th Feb. 1837, on issue of writ, 90 Ib. 262; 91 Ib. 792. Sudbury, writ suspended, from time to time, from 14th April 1842, till 1st August 1843: 97 Ib. 188. 467, &c.; Disfranchisement Act, 7 & 8 Vict. c. 53. Ipswich, 1842; writ suspended at intervals, from 25th April until 1st Aug. 1842; 97 Com. J. 221. 554. Yarmouth, 1848; writ suspended from 14th Feb. until 30th June; 103 Ib. 213; freemen disfranchised by 11 & 12 Vict. c. 24. Harwich, 1848; 103 Com. J. 330. 702. In 1851, an Act was passed for inquiring into bribery at St. Albans, 14 & 15 Vict. c. 106; and the result of this inquiry was the disfranchisement of that borough by 15 & 16 Vict. c. 9. Barnstaple; writ suspended from 22nd April 1853, until 11th Aug. 1854. Cambridge; writ suspended from 3rd March 1853, until 11th Aug. 1854. Canterbury; writ suspended from 22nd Feb. 1853, until 11th Aug. 1854. Wakefield and Gloucester; writs suspended from July 1859, until 20th Feb. 1862. See 156 Hans. Deb. 3rd Ser. 771; 157 Ib. 1637; 161 Ib. 247; 163 Ib. 1070, &c. Norwich; writ suspended in 1875; 130 Com. J. 247; Act passed in 1876, forbidding any election during the Parliament, 39 & 40 Vict. c. 72. Wigan election, 1880; writ suspended until Nov. 1881. On several other occasions writs have been suspended for shorter periods until the printing of evidence; *e.g.*, Nottingham, 1843; Harwich, 1848; and Clitheroe, 1853.

[4] It has been customary to order copies of disfranchisement bills to be served upon the returning officer

Commissions of inquiry.

An effectual mode of investigating corrupt practices at elections was established by 15 & 16 Vict. c. 57, which provided that where both houses, by a joint address, represent to her Majesty that an election committee has reported to the House of Commons that corrupt practices have, or that there is reason to believe they have, extensively prevailed in any place, and pray for an inquiry, by persons named in such address, her Majesty is to appoint a commission, which has all necessary powers of inquiry.[1] And by the Election Petitions, &c. Act, 1868, such addresses may be founded, in the same manner, upon the reports of election judges. And addresses have been agreed to, pursuant to these acts, in the cases of Canterbury, Cambridge, Maldon, Barnstaple, Kingston-upon-Hull, and Tynemouth, in 1853; Galway in 1857; Gloucester and Wakefield, in 1859; Lancaster, Great Yarmouth, Reigate, and Totnes, in 1866; Beverley, Bridgwater, Cashel, Sligo, Dublin, and Norwich, in 1869; Norwich and Boston, in 1874; Boston, Canterbury, Chester, Gloucester, Knaresborough, Macclesfield, Oxford, and Sandwich, in 1880. In 1881, the motion for an address for inquiry into corrupt practices at Wigan, was negatived.[2] But no writ was issued for that borough until November in the following year.[3]

Form of address.

The Canterbury election committee, 1853, in recommending further inquiry, did not report in the precise terms of the Act, but adopted equivalent expressions. The address, however, necessarily followed the words of the Act;[4] and though this discrepancy did not pass without objection,[5] it was agreed to by both houses.[6] In the Clitheroe case the Lords declined

before the second reading; 99 Com. J. 443; 103 Ib. 366. Lancaster, Great Yarmouth, Reigate, and Totnes, 1866; Bridgwater and Beverley, Sligo and Cashel, 1870; Norwich and Boston, 1876; 131 Com. J. 325; see also *infra*, p. 732.

[1] The payment of the expenses of such commissions has been further regulated by 32 & 33 Vict. c. 21, and 34 & 35 Vict. c. 61.

[2] 136 Com. J. 478.

[3] 137 Ib. 514.

[4] 108 Ib. 338.

[5] See debates in Commons, 15th March, and in Lords, 12th April 1853.

[6] See also Lords' debates, 30th May 1853, on the Maldon case, and protest of Lord St. Leonards.

to concur in an address.[1] In 1869, commissioners were appointed, by statute, to inquire into corrupt practices reported, by an election judge, to have been committed by the freemen of Dublin.

Bills founded on reports of commissioners.

In 1854, bills were brought in founded upon reports of the commissioners, in the cases of Canterbury, Maldon, Barnstaple, and Kingston-upon-Hull, for the prevention of bribery in those places; and in 1858, for the disfranchisement of the freemen of Galway: but all these bills miscarried, mainly in consequence of the indemnity granted, under the Act of 15 & 16 Vict. c. 57, to voters who had given evidence of corrupt practices. But by the Corrupt Practices Act, 1863, certificates of indemnity were made a protection in civil or criminal proceedings only; and could, therefore, no longer be urged as a bar to bills of disfranchisement. And accordingly, by the Reform Act of 1867, the four corrupt boroughs of Lancaster, Great Yarmouth, Reigate, and Totnes were disfranchised. In 1870, the boroughs of Bridgwater, Beverley, Sligo, and Cashel, and certain voters of the cities of Norwich and Dublin, were disfranchised by special Acts;[2] and in 1871 certain other voters of Norwich were disfranchised. In 1876, after the reports of two commissions, an Act was passed forbidding an election for Norwich until the end of the Parliament, and disfranchising several persons for a period of seven years, in Norwich and Boston.[3] And since the general election of 1880 it has been enacted, from time to time, that no election should be held for Boston, Canterbury, Chester, Gloucester, Macclesfield, Oxford, and Sandwich.[4]

[1] 108 Com. J. 490.
[2] 33 & 34 Vict. cc. 21, 25, 38, 54.
[3] 39 & 40 Vict. c. 72.
[4] 44 & 45 Vict. c. 42; 45 & 46 Vict. c. 68.

CHAPTER XXIII.

IMPEACHMENT BY THE COMMONS; GROUNDS OF ACCUSATION; FORM OF THE CHARGE; ARTICLES OF IMPEACHMENT; THE TRIAL AND JUDGMENT; PROCEEDINGS NOT CONCLUDED BY PROROGATION OR DISSOLUTION; PARDON NOT PLEADABLE. TRIAL OF PEERS. BILLS OF ATTAINDER AND OF PAINS AND PENALTIES.

Rarity of impeachments in modern times.

IMPEACHMENT by the Commons, for high crimes and misdemeanors beyond the reach of the law, or which no other authority in the state will prosecute, is a safeguard of public liberty well worthy of a free country, and of so noble an institution as a free Parliament: but, happily, in modern times, this extraordinary judicature is rarely called into activity.[1] The times in which its exercise was needed were those in which the people were jealous of the Crown: when the Parliament had less control over prerogative; when courts of justice were impure; and when, instead of vindicating the law, the Crown and its officers resisted its execution, and screened political offenders from justice: but the limitations of prerogative, the immediate responsibility of the ministers of the Crown to Parliament, the vigilance and activity of that body in scrutinizing the actions of public men, the settled administration of the law, and the direct influence of Parliament over courts of justice, which are, at the same time, independent of the Crown,[2] have prevented the consummation of those crimes which impeachments were designed to punish. The Crown is entrusted by the constitution with the prosecution of all offences; there are few which the law cannot

[1] For the number of impeachments at different times, see *supra*, p. 58.

[2] By the Acts 13 Will. III. c. 2, s. 3, and 1 Geo. III. c. 23, the commissions of judges are made *quamdiu se bene gesserint;* their salaries are ascertained and established: but it may be lawful to remove them upon the address of both houses of Parliament.

punish; and if the executive officers of the Crown be negligent or corrupt, they are directly amenable to public opinion, and to the censure of Parliament.

Grounds of impeachment.

From these causes, impeachments are reserved for extraordinary crimes and extraordinary offenders; but by the law of Parliament, all persons, whether peers or commoners, may be impeached for any crimes whatever.

Peers and commoners.

It was always allowed that a peer might be impeached for any crime, whether it were cognizable by the ordinary tribunals or not; but doubts have been entertained, upon the supposed authority of the case of Simon de Beresford, in the 4th Edward III.,[1] whether a commoner could be impeached for any capital offence.

Blackstone, relying upon this case, and overlooking later authorities, affirmed that "a commoner cannot be impeached before the Lords for any capital offence, but only for high misdemeanors."[2] And more recently Lord Campbell has expressed an opinion to the same effect.[3] Simon de Beresford, however, was not impeached by the Commons, but was charged before the Lords at the suit of the Crown; and after they had given judgment against him, they made a declaration, which by some has even been regarded as a statute,[4] "that the aforesaid judgment be not drawn into example or consequence in time to come, whereby the said peers may be charged hereafter to judge others than their peers, contrary to the law of the land." Whatever weight may be attached to this declaration, it clearly applies to cases similar to that of de Beresford, and cannot be extended to impeachments by the Commons. In subsequent cases, the Lords violated their own declaration, by trying commoners for capital offences at the suit of the Crown;[5] and such trials were unquestionably contrary to Magna Charta[6] and to the common law. But an

[1] 2 Rot. Parl. 53, 54; 4 Edw. III. Nos. 2 and 6.

[2] 4 Comm. c. 19.

[3] 3 Lives of the Chancellors, 358, 359. 410.

[4] 14 Lords' J. 260.

[5] Lord Hale, Jurisd. of House of Lords, 92.

[6] "Nec super eum *ibimus*, nisi per legale judicium parium suorum."

impeachment by the Commons is a proceeding of a character wholly distinct; and its legality has been recognised by Selden,[1] Lord Hale,[2] and other constitutional authorities,[3] and established by numerous parliamentary precedents.[4]

Case of Fitzharris.

The only case in which it appears to have been questioned by the Lords was that of Fitzharris. On the 26th March 1681, Edward Fitzharris was impeached of high treason: but the House of Lords, on being informed by the attorney-general that he had been instructed to indict Fitzharris at common law, resolved that they would not proceed with the impeachment.[5] The grounds of their decision were not stated; but from the protest entered in their Journals, from the resolution of the Commons, and from the debates in both houses, it may be collected that the fact of his being a commoner had been mainly relied on.[6] The Commons protested against the resolution of the Lords, as "a denial of justice, and a violation of the constitution of Parliaments;" and declared it to be their "undoubted right to impeach any peer or commoner for treason, or any other crime or misdemeanor;" but the impeachment was at an end, and the trial at common law proceeded. On his prosecution by indictment, Fitzharris pleaded in abatement that an impeachment was then pending against him for the same offence, but his plea was overruled by the Court of King's Bench.[7]

Case of Sir A. Blair, and others.

The authority of this single and exceptional case, however, is of little value; and has been superseded by later cases. An impeachment for high treason was depending, at the very time, against Chief Justice Scroggs,[8] a commoner; and when,

[1] Judicature of Parliament, 3 Seld. Works, Part II. 1589.

[2] Jurisd. of the Lords, c. 16.

[3] 4 Hatsell, 60, *n.*, 84. 216, *n.*; 2 Hallam, Const. Hist. 144.

[4] Sir R. Belknap and others, and Simon de Beverley and others, 1383; 3 Rot. Parl. 238. 240. Judge Berkley and other judges, 1640; 4 Hatsell, 163, &c. O'Neile, Jermyn, Piercy, and others, 1641; 4 Hatsell, 187, &c.

[5] 13 Lords' J. 755.

[6] 8 Howell's St. Tr. 231–239; 2 Burnet, Own Times, 280; 4 Hans. Parl. Hist. 1333.

[7] 8 Howell, St. Tr. 326.

[8] 13 Lords' J. 752.

on the 26th June 1689, Sir Adam Blair, and four other commoners, were impeached of high treason, the Lords, after receiving and considering a report of precedents, including that of Simon de Beresford,[1] and negativing a motion for requiring the opinion of the judges, resolved that the impeachment should proceed.[2] And thus the right of the Commons to impeach a commoner of high treason has been affirmed by the last adjudication of the House of Lords.

Commencement of proceedings.

It rests, therefore, with the House of Commons to determine when an impeachment should be instituted. A member, in his place, first charges the accused of high treason, or of certain high crimes and misdemeanors, and after supporting his charge with proofs, moves that he be impeached. If the house deem the ground of accusation sufficient, and agree to the motion, the member is ordered to go to the Lords, "and at their bar, in the name of the House of Commons, and of all the commons of the United Kingdom, to impeach the accused; and to acquaint them that this house will, in due time, exhibit particular articles against him, and make good the same." The member, accompanied by several others, proceeds to the bar of the House of Lords, and impeaches the accused accordingly.[3]

Articles of impeachment.

In the case of Warren Hastings, articles of impeachment had been prepared before his formal impeachment at the bar of the House of Lords: but the usual course has been to prepare them afterwards. A committee is appointed to draw up the articles, and on their report, the articles are discussed, and, when agreed to, are ingrossed and delivered to the Lords, with a saving clause, to provide that the commons shall be at liberty to exhibit further articles from time to time.[4] The accused sends answers to each article, which, together with all writings delivered in by him, are commu-

[1] See this report, 4 Hatsell, 428.
[2] 14 Lords' J. 260.
[3] 45 Ib. 350.
[4] 60 Com. J. 482, 483.

nicated to the Commons by the Lords;[1] and to these, replications are returned, if necessary.[2]

If the accused be a peer, he is attached or retained in custody, by order of the House of Lords;[3] if a commoner, he is taken into custody by the serjeant-at-arms attending the Commons,[4] by whom he is delivered to the gentleman usher of the black rod, in whose custody he remains,[5] unless he be admitted to bail by the House of Lords;[6] or be otherwise disposed of by their order. Accused taken into custody.

The Lords appoint a day for the trial, and in the meantime the Commons appoint managers to prepare evidence and conduct the proceedings,[7] and desire the Lords to summon all witnesses, who are required to prove their charges.[8] The accused may have summonses issued for the attendance of witnesses on his behalf, and is entitled to make his full defence by counsel.[9] Managers appointed. Witnesses summoned.

The trial has usually been held in Westminster Hall, which has been fitted up for that purpose. In the case of peers impeached of high treason, the House of Lords is presided over by the Lord High Steward, who is appointed by the Crown, on the address of their lordships; but, at other times, by the Lord Chancellor or Lord Speaker of the House of Lords. The Commons attend the trial, as a committee of the whole house,[10] when the managers make their charges, and adduce evidence in support of them: but they are bound to confine themselves to charges contained in the articles of impeachment. Mr. Warren Hastings complained, by petition to the House of Commons, that matters of accusation had been added to those originally laid to his charge, and the house resolved that certain words ought not to have been The trial. Charges to be confined to the articles.

[1] 20 Lords' J. 297; 18 Com. J. 391.
[2] 61 Com. J. 164.
[3] 20 Lords' J. 112; 27 Ib. 19.
[4] 16 Com. J. 242; 42 Ib. 793.
[5] 42 Ib. 796.
[6] 37 Lords' J. 714.
[7] 61 Com. J. 169.
[8] Ib. 224.
[9] 20 Geo. II. c. 30; 45 Lords' J. 439.
[10] 45 Lords' J. 519.

spoken by Mr. Burke.[1] When the case has been completed by the managers, they are answered by the counsel for the accused, by whom witnesses are also examined, if necessary; and, in conclusion, the managers, as in other trials, have been allowed a right of reply.

Lords determine if the accused be guilty.

When the case is thus concluded, the Lords proceed to determine whether the accused be guilty of the crimes with which he has been charged. The Lord High Steward puts to each peer, beginning with the junior baron, the question upon the first article, whether the accused be guilty of the crimes charged therein. Each peer, in succession, rises in his place when the question is put, and standing uncovered, and laying his right hand upon his breast, answers "guilty," or "not guilty," as the case may be, "upon my honour." Each article is proceeded with separately, in the same manner, the Lord High Steward giving his own opinion the last.[2] The numbers are then cast up, and being ascertained, are declared by the Lord High Steward to the lords, and the accused is acquainted with the result.[3]

Commons demand judgment.

If the accused be declared not guilty, the impeachment is dismissed; if guilty, it is for the Commons, in the first place, to demand judgment of the lords against him; and they would protest against any judgment being pronounced until they had demanded it. On the 17th March 1715, the Commons resolved, *nem. con.*, in the impeachment of the Earl of Winton,

> "That the managers for the Commons be empowered, in case the House of Lords shall proceed to judgment before the same is demanded by the Commons, to insist upon it, that it is not parliamentary for their lordships to give judgment, until the same be first demanded by this house."[4]

And a similar resolution was agreed to on the impeachment of Lord Lovat, in 1746.[5]

[1] 44 Com. J. 298. 320.
[2] Printed Trial of Lord Melville, p. 402.
[3] Ib. p. 413.
[4] 18 Com. J. 405.
[5] 25 Ib. 320.

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The judgment.

When judgment is to be given, the Lords send a message to acquaint the Commons that their lordships are ready to proceed further upon the impeachment: the managers attend; and the accused, being called to the bar, is then permitted to offer matters in arrest of judgment.[1] Judgment is afterwards demanded by the Speaker, in the name of the Commons, and pronounced by the Lord High Steward, the Lord Chancellor, or Speaker of the House of Lords.[2]

The necessity of demanding judgment gives to the Commons the power of pardoning the accused, after he has been found guilty by the Lords; and in this manner an attempt was made, in 1725, to save the Earl of Macclesfield from the consequences of an impeachment, after he had been found guilty by the unanimous judgment of the House of Lords.[3]

Proceedings not concluded by prorogation or dissolution.

So important is an impeachment by the Commons, that not only does it continue from session to session, in spite of prorogations, by which other parliamentary proceedings are determined: but it survives even a dissolution, by which the very existence of a Parliament is concluded:[4] but as the preliminary proceedings of the House of Commons would require to be revived in another session, acts were passed in 1786 and in 1805, to provide that the proceedings depending in the House of Commons, upon the articles of charge against Warren Hastings and Lord Melville, should not be discontinued by any prorogation or dissolution of Parliament.[5]

Pardon not pleadable.

In the case of the Earl of Danby, in 1679, the Commons protested against a royal pardon being pleaded in bar of an impeachment, by which an offender could be screened from the inquiry and justice of Parliament, by the intervention of prerogative.[6] Directly after the Revolution, the Commons

[1] 22 Lords' J. 556; 27 Ib. 78.

[2] 22 Ib. 560.

[3] Ib. 554, 555. 20 Com. J. 541 (27th May 1725). 6 Howell, St. Tr. 762.

[4] 39 Lords' J. 191; and see Report of Precedents, Ib. 125. 46 Com. J. 136. 2 May, Const. Hist. (7th edit.), 93.

[5] 26 Geo. III. c. 96; 45 Geo. III. c. 125.

[6] See 4 Hatsell, 197, *n.* 208. 400. 405. 3 Lord Macaulay, Hist. 407.

asserted the same principle, and within a few years it was declared by the Act of Settlement,[1] "that no pardon under the great seal of England, shall be pleadable to an impeachment by the Commons in Parliament."

But may be given afterwards.

But, although the royal prerogative of pardon is not suffered to obstruct the course of justice, and to interfere with the exercise of parliamentary judicature; yet the prerogative itself is unimpaired in regard to all convictions whatever; and after the judgment of the Lords has been pronounced, the Crown may reprieve or pardon the offender. This right was exercised in the case of three of the Scottish lords who had been concerned in the rebellion of 1715, and who were reprieved by the Crown, and at length received the royal pardon.

Crimes for which peers are tried by their peers.

Concerning the trial of peers, very few words will be necessary. At common law, the only crimes for which a peer is to be tried by his peers, are treason, felony, misprision of treason, and misprision of felony; and the statutes which give such trial have reference to the same offences, either at common law, or created by statute. For misdemeanors, and in cases of præmunire, it has been held that peers are to be tried in the same way as commoners, by a jury.[2]

In Parliament, or by court of Lord High Steward.

During the sitting of Parliament, they are tried by the House of Peers; or, more properly, before the court of our lady the Queen in Parliament,[3] presided over by the Lord High Steward appointed by commission under the great seal:[4] but at other times, they may be tried before the court of the Lord High Steward.[5] This court was formerly constituted in so anomalous a manner, as scarcely to deserve the name of a court of justice. The Lord High Steward, himself nominated by the Crown, summoned to the trial, at his discretion, such peers as he selected, whose number was required to be not less than twelve: but was otherwise indefi-

[1] 12 & 13 Will. III. c. 2.

[2] Rex *v.* Lord Vaux, 1 Bulstr. 197.

[3] Foster, Crown Law, 141.

[4] After the trial his grace breaks the white staff, and declares the commission dissolved. See published trial of the Earl of Cardigan.

[5] See 4 Blackstone Comm. 260.

nite. The abuses arising out of this constitution of the court,[1] however, were remedied by the 7 Will. III. c. 3, which requires that, on the trial of a peer, all the peers shall be summoned.

Indictments against peers.

By the 4 & 5 Vict. c. 22, it was enacted, "that every lord of parliament, or peer of this realm, having place and voice in Parliament, against whom any indictment may be found, shall plead to such indictment, and shall, upon conviction, be liable to the same punishment as any other of her Majesty's subjects."

Indictments are found, in the usual manner, against peers charged with treason or felony; but are certified into the House of Lords by writs of *certiorari*, when the proceedings are immediately taken up by that house. It is usual, in such cases, to appoint a committee to inspect the Journals upon former trials of peers, and to consider the proper methods of proceeding: and if the accused peer be not already in custody, an order is forthwith made for the gentleman usher of the black rod to attach him, and bring him to the bar of the house.[2]

Accused peers at the bar.

Peers on trial before the Lords for misdemeanors are allowed a seat within the bar: but if tried for treason or felony, they are placed outside the bar.[3]

Trial of peers to be in full Parliament.

On the 14th January 1689, it was resolved by the Lords, "That it is the ancient right of the peers of England to be tryed only in full Parliament for any capital offences:" but on the 17th, it was declared that this order should not "be understood or construed to extend to any appeal of murther or other felonye, to be brought against any peer or peers."[4]

Declaration concerning appeals of murther, &c.

Lord High Steward.

When a peer is tried in full Parliament, the Lord High Steward votes with the other peers; but when the trial is

[1] See trial of Lord Delamere, 11 Howell, St. Tr. 539; 2 Lord Macaulay, Hist. 38.

[2] 99 Hans. Deb. 3rd Ser. 1050 (23rd June 1848); 80 Lords' J. 415.

[3] 3 Lord Campbell, Lives of Chancellors, 538, *n.*

[4] Lords' S. O. No. 60.

before the court of the lord high steward, he is only the judge to give direction in point of law; and the verdict is given by the Lords-triers.[1]

Spiritual lords.

In the trial of peers, the position of the bishops is at once anomalous and ill-defined. Not being themselves ennobled in blood, they are "not of trial by nobility,"[2] but would be tried for a capital offence by a jury, like other commoners.[3] But though not entitled to a trial by the peers, they claim, and to a certain extent exercise, the right of sitting, as judges, upon the trial of peers in full Parliament. By the Act 7 Will. III. c. 3, it is enacted, "that upon the trial of any peer or peeress for high treason or misprision, all the peers who have a right to sit and vote in Parliament shall be duly summoned twenty days at least before every such trial; and that every peer so summoned and appearing, shall vote in the trial." This Act, however, does not "extend to any impeachment, or other proceeding in Parliament, in any kind whatsoever." In other words, it relates solely to the trial of peers before the court of the lord high steward; and to this court no spiritual lord has ever been summoned, either before or since the passing of that Act. It expressly refers to "peers" only, and by a declaration of the House of Lords the "bishops are only lords of Parliament, and not peers." But when a peer is to be tried in full Parliament, the bishops, as lords of Parliament, are entitled to take part in the proceedings of the House of Lords, of which they are members, and they are always summoned to attend with the other peers.[4] Here, however, they are restrained from the full exercise of their judicial functions, by their ecclesiastical obligations. By the canons of the Church,[5] they are pro-

[1] 3 Lord Campbell, Lives of Chan. 557, *n.*

[2] Lords' S. O. No. 61.

[3] 1st Inst. 31; 3rd Inst. 30; Gibson, Codex, 133; Gilbert, Exch. 40; 1 Burn, Eccl. Law, 221 *et seq.*; Trials of Bishop Fisher and Archbishop Cranmer, 1 Howell, St. Tr. 399. 771.

[4] 73 Lords' J. 16; Foster's Crown Law, 247.

[5] Gibson, Codex, 124, 125; and see 2 Burnet, Own Times, 216; and 3 Stillingfleet, Works, 820.

hibited from voting in cases of blood: and by the Constitutions of Clarendon,[1] it was declared, "that bishops, like other peers (or barons), ought to take part in trials in the King's court, or council, with the peers, until it comes to a question of the loss of life or limb."

Spiritual lords withdraw.

It was declared by the Lords, on the impeachment of the Earl of Danby, "That the lords spiritual have a right to stay and sit in court in capital cases, till the court proceed to the vote of guilty or not guilty."[2] And in accordance with this rule, the bishops are present during the trial of peers in Parliament, but ask leave to be absent from the judgment; which being agreed to, they withdraw, in compliance with the canons of the Church, but enter a protestation, "saving to themselves and their successors, all such rights in judicature as they have by law, and by right ought to have."[3]

Bishops vote in bills of attainder.

In passing bills of attainder, the bishops are not subjected to the same restraints as upon an impeachment. The proceedings, though judicial, are legislative in form; and as they consist of numerous stages, no particular vote involves a conclusive judgment upon the accused. In the attainder of Sir John Fenwick, in 1696, the bishops voted in all the proceedings, and even upon the final question for the passing of the bill.[4]

Representative peers of Scotland,

By the 23rd article of the Act of Union with Scotland, it is declared, that the sixteen representative peers shall have the right of sitting upon the trials of peers; "and in case of the trial of any peer in time of adjournment or prorogation of Parliament, they shall be summoned in the same manner, and have the same powers and privileges at such trial, as any other peers of Great Britain;" and in case there shall be any trials of peers when there is no Parliament in being, the sixteen peers who sat in the last Parliament shall be summoned in the same manner. All peers of Scotland enjoy the privilege of being tried as peers of Great Britain.

[1] 11 Hen. II. A.D. 1164; 1 Wilkins' Concilia, 435.

[2] 13 Lords' J. 571.

[3] 27 Ib. 76; 73 Ib. 43.

[4] 16 Lords' J. 44. 48; 13 Howell, St. Tr. 750 *et seq.*

and Ireland.

By the 4th article of the Act of Union with Ireland, it was enacted, that "the (representative) lords spiritual and temporal respectively, on the part of Ireland, shall have the same rights in respect of their sitting and voting upon the trial of peers, as the lords spiritual and temporal respectively on the part of Great Britain;" and that all the peers of Ireland shall be sued and tried as peers, but shall not have the right of sitting on the trial of peers.

Bills of attainder and of pains and penalties.

The proceedings of Parliament in passing bills of attainder, and of pains and penalties, do not vary from those adopted in regard to other bills. They may be introduced into either house,[1] but ordinarily commence in the House of Lords: they pass through the same stages; and when agreed to by both houses, they receive the royal assent in the usual form. But the parties who are subjected to these proceedings are admitted to defend themselves by counsel and witnesses, before both houses; and the solemnity of the proceedings would cause measures to be taken to enforce the attendance of members upon their service in Parliament.[2]

The highest form of parliamentary judicature.

In evil times, this summary power of Parliament to punish criminals by statute has been perverted and abused; and in the best of times, it should be regarded with the severest jealousy: but whenever a fitting occasion arises for its exercise, it is, undoubtedly, the highest form of parliamentary judicature. In impeachments, the Commons are but accusers, and advocates; while the Lords alone are judges of the crime. On the other hand, in passing bills of attainder, the Commons commit themselves by no accusation, nor are their powers directed against the offender; but they are judges of equal jurisdiction, and with the same responsibility, as the Lords; and the accused can only be condemned by the united judgment of the Crown, the Lords, and the Commons.

[1] In 1722, the bill of pains and penalties against Dr. Atterbury, Bishop of Rochester, was brought into the Commons; 20 Com. J. 165.

[2] See 25 Lords' J. 35. 364.

BOOK III.

THE MANNER OF PASSING PRIVATE BILLS.

CHAPTER XXIV.

DISTINCTIVE CHARACTER OF PRIVATE BILLS; PRELIMINARY VIEW OF THE PROCEEDINGS OF PARLIAMENT IN PASSING THEM.

Definition of private bills.

EVERY bill for the particular interest or benefit of any person or persons, is treated, in Parliament, as a private bill. Whether it be for the interest of an individual, a public company or corporation, a parish, a city, a county, or other locality;[1] it is equally distinguished from a measure of public policy, in which the whole community are interested; and this distinction is marked by the solicitation of private bills by the parties themselves whose interests are concerned. By the Standing Orders of both houses, all private bills are required to be brought in upon petition;[2] and the payment of fees, by the promoters, is an indispensable condition to their progress.

Bills concerning the metropolis.

But while the distinction between public and private bills may be thus generally defined, considerable difficulties often arise, in determining to what class particular bills properly belong. Though a bill relating to a city is generally held to be a private bill, bills concerning the metropolis have been dealt with as public bills,—the large area, the number of parishes, the vast population, and the variety of interests concerned, constituting them measures of public policy, rather

[1] See *infra*, Chap. XXIX. and 2 Hatsell, 281-288. A bill for the benefit of three counties has been held to be a private bill; 1 Com. J. 388.

[2] But see exceptions, *infra*, Chap. XXVI.

than of local interest. Thus the Metropolis Police Bills in 1828 and 1839, the Metropolis Local Management Bill in 1855, the Main Drainage of the Metropolis Bill in 1858, and other similar bills,[1] were brought in, and passed through all their stages, as public bills. In 1851, 1852 and 1878, the Metropolis Water Supply Bills, which, while they concerned the metropolis, yet more particularly dealt with the special interests of existing water companies, were brought in as public bills, but were otherwise dealt with as "hybrid," or *quasi* private bills.[2] And, in 1862 and 1863, bills for the embankment of the Thames were brought in as public bills: but, as private property and interests were affected, the Standing Orders were complied with, and other proceedings taken, as in the case of private bills. The same course was adopted, in 1867 and 1876, with the Metropolis Gas Bills; in 1874, with the Metropolis Water Supply and Fire Prevention Bill;[3] in 1877, with the Metropolitan Toll Bridges Bill; and in 1877, and again in 1879, the Thames River (Prevention of Floods) Bill. In 1880, the Metropolitan Waterworks Purchase Bill was brought in as a public bill, but, as it affected private interests, was referred to the examiners.[4] Such bills, however, appear among the public orders of the day, and are treated in the house as public bills;[5] and petitions against them are presented to the house, and not deposited in the Private Bill Office. In 1857, the

[1] Metropolitan Building Acts, 8 & 9 Vict. c. 84; 9 & 10 Vict. c. 5; 18 & 19 Vict. c. 122. Metropolitan Buildings and Management Bill, 1874; 129 Com. J. 31. Metropolitan Police Courts, 1839, 1840. Metropolitan Sewers Bills, 1848 and 1854. Annoyance Juries (Westminster) Bill, 1861. Metropolitan Board of Works (Loans) Bill, 1876; 131 Ib. 336; 132 Ib. 348; 133 Ib. 345; 137 Ib. 225. Metropolis Management and Buildings Act Amendment Bills, 1878 and 1882; 133 Ib. 16; 137 Ib. 113.

[2] 106 Ib. 191; 133 Ib. 13. See *infra*, p. 787.

[3] 129 Com. J. 73; 132 Ib. 30.

[4] 135 Ib. 74.

[5] Speaker's Order, 1st April 1862: "The Speaker directs that bills brought in on motion, for objects of a public nature, although they may affect private interests, and therefore come within the Standing Orders relating to private bills, shall in future be entered amongst the public orders of the day, and not placed on the private business paper."

Thames Conservancy Bill, and, in 1882, the Metropolis Management and Floods Prevention Bill, were introduced as private bills, on petition; but the latter was afterwards consolidated with a public bill.[1] In 1881, the Thames Navigation Bill was brought in as a private bill; but many objections having been raised to this course of proceeding, the bill was afterwards withdrawn, and a public bill was introduced.[2] In 1874, and every succeeding year, bills for giving further powers to the Metropolitan Board of Works (chiefly in respect of new streets and other local improvements) were introduced and passed as private bills.[3] Such bills are in the nature of private bills, and are properly so treated; but if they contain powers to raise money, they are required by Standing Order, No. 194, to be introduced as public bills, and referred to a select committee, nominated by the committee of selection. The financial provisions, however, for executing these several works are annually comprised in a separate public bill, introduced by the government, and treated throughout as a money bill. And it has been held that Standing Order, No. 194, does not apply to this form of bill, but only to a private bill promoted by the board, and containing powers for raising money.[4]

City of London.

Bills concerning the City of London only have generally been private bills, having been solicited by the corporation itself, which desired special legislation affecting its own property, interests, and jurisdiction.[5] Thus, even the bill for establishing a police force within the city, was brought in upon petition, and passed as a private bill.[6] And in 1863, when it was sought to repeal that Act by a public bill for the amalgamation of the city and metropolitan police, without the required notices, the Standing Orders Committee refused

[1] 137 Com. J. 24. 132.

[2] 136 Ib. 162. 214.

[3] 129 Ib. 26; 130 Ib. 19; 131 Ib. 21; 132 Ib. 24; 136 Ib. 33, &c.

[4] 21st July 1881; 263 Hans. Deb. 3rd Ser. 1882.

[5] City Small Debts Bills, 1847 and 1848; City Sewers Bills, 1848 and 1851; City Elections Bill, 1849; Coal Duties Bill, 1851.

[6] 94 Com. J. 175. So also a bill for amending that Act in 1874; 129 Ib. 33.

to allow the bill to be proceeded with. Private bills also have been solicited for the reform of the corporation itself;[1] while the government have proposed public measures, in the interests of the public, for the same object.[2] Again, the corporation and others sought, by means of private bills, to improve Smithfield Market, or otherwise provide a suitable market for cattle;[3] while the Metropolitan Cattle Market was ultimately established by a public bill, brought in by the government, but otherwise treated as a private or "hybrid" bill.[4] This Act, however, was amended in 1875 by a private Act;[5] and the Metropolitan Cattle Market Bill was treated, in the same year, as a private bill.[6] Other bills, again, concerning the City of London, but at the same time affecting public interests, and involving considerations of public policy, have been introduced and passed as public bills.[7] In 1864, the Weighing of Grain (Port of London) Bill, was held to be properly a public bill, as affecting an extensive area, and a population of 3,000,000, and its object being to substitute weighing for measurement of grain, in conformity with a public Act of the same session, by which the duty on foreign grain was levied by weight instead of by measure.[8] But in 1872, and again in 1877, private bills were passed for regulating the metage of grain in the port of London.[9] In 1870, on the second reading of the Brokers (City of London) Bill, objection was taken that it ought to have been brought in as a private bill; but the deputy Speaker stated that the bill had been referred to the examiner, who had decided otherwise;[10] and in 1883, another bill, founded upon this

[1] 104 Com. J. 15; 107 Ib. 57; 119 Hans. Deb. 3rd Ser. 1035.

[2] 141 Hans. Deb. 3rd Ser. 314; 154 Ib. 946; 156 Ib. 282.

[3] 103 Com. J. 176; 106 Ib. 26.

[4] 106 Ib. 66, &c.

[5] 130 Ib. 34.

[6] Ib. 11.

[7] Coalwhippers (Port of London), 1843, 1846 and 1851. Vend and delivery of coals in London and Westminster, 1845. (There was also a private bill in the same year.) Ballast-heavers (Port of London), 1852; Coal and Wine Duties continuance, 1861, 1863, and 1868.

[8] 176 Hans. Deb. 3rd Ser. 171.

[9] 132 Com. J. 8.

[10] 202 Hans. Deb. 3rd Ser. 740.

precedent, was introduced as a public bill. In 1871, the Court of Hustings (City of London) Bill, which established a court having jurisdiction over the metropolis, was brought in as a private bill; but on notice being taken of the extent and public importance of the measure, it was withdrawn.[1] In 1879, the London Bridge Approaches Bill, and the London (City) Tithes Bill; in 1881, the London (City) Lands Bill; and in 1882, the Metropolitan Markets (Fish), &c. Bills, were brought in upon petition. In 1881, and again in 1882 and 1883, the London (City) Parochial Charities Bill was brought in as a public bill; and in 1882, a bill for the same purpose was also introduced, upon petition, as a private bill.[2]

Edinburgh and Dublin.

Bills concerning Edinburgh and Dublin have also been public or private, according to their objects, and the circumstances connected with their introduction.[3] The abolition of the annuity tax in Edinburgh has thus been the subject of both public[4] and private bills.[5] In 1879, and again in 1882, the Edinburgh Municipal and Police Bill was introduced as a private bill upon petition.[6] The collection of rates in Dublin has also been the subject of public and private bills;[7] while legislation for the port of Dublin has generally been proposed in public bills.[8] In 1876, the Dublin (South) City Markets Bill was introduced and passed as a private bill.[9] But in 1882, the Dublin (City) Highways Bill was brought in as a public bill, but was afterwards treated as a "hybrid" bill.[10]

Bill containing a government guarantee.

In 1861, the Red Sea and India Telegraph Bill, which amended a private Act, was introduced and proceeded with as

[1] Hans. Deb. 23rd March 1871.

[2] 136 Com. J. 12; 137 Ib. 19.

[3] Edinburgh Courts of Justice Bill, 1838; Edinburgh and Leith Agreement Bill, 1838, &c.; Edinburgh Municipality Bill, 1856 (private); General Register House Bill, 1847 (public); Edinburgh Improvement Bill, 1876 (private); 131 Com. J. 236.

[4] 108 Com. J. 612; 112 Ib. 298.

[5] 107 Ib. 48.

[6] 134 Ib. 32; 137 Ib. 27.

[7] 98 Ib. 62; 104 Ib. 342; 105 Ib. 329.

[8] 6 & 7 Will. IV. c. 117; 1 & 2 Vict. c. 36; 17 & 18 Vict. c. 22.

[9] 131 Com. J. 69, &c.

[10] 137 Ib. 75.

a public bill, as it concerned the conditions of a government guarantee.[1]

A bill affecting four harbours.

In 1856, the Passing Tolls on Shipping Bill was held to be properly a public bill. It concerned the harbours of Dover, Ramsgate, Whitby, and Bridlington; abolished passing tolls, transferred those harbours to the Board of Trade, imposed rates, and repealed local Acts: but being a measure of general policy, its character was not changed by the fact that these harbours only came under its operation. And again, the Harbours Bill, in 1861, affected the same four harbours, and the local Acts under which they were administered, but otherwise dealt with so many matters of general legislation, as to be unquestionably a measure of public policy.[2] In 1875, the Dover Pier and Harbour Bill, promoted by the government for public objects, was introduced as a public bill, but was proceeded with as a "hybrid" bill.[3]

A bill affecting public monuments.

In 1873, a public bill was introduced, for the protection and preservation of certain ancient monuments, in various parts of the country, the monuments in question being enumerated in the schedule to the bill. Objections were raised, that as the bill affected the property of persons upon whose lands those monuments were situated, it should have been brought in as a private bill: but its character and objects were obviously of a public character, and it concerned too many counties and localities to be treated as a private bill; nor were any of its objects such as are contemplated by the Standing Orders, or referred to in them.[4]

Administration of justice.

Bills relating to the administration of justice, and other public jurisdictions, have often been treated as public bills:[5]

[1] 116 Com. J. 36. Mr. Speaker Denison's Note-Book.

[2] 24 & 25 Vict. c. 47.

[3] 130 Com. J. 74.

[4] See 218 Hans. Deb. 3rd Ser. 574; 223 Ib. 879.

[5] King's County Assizes Bill, 1832; Dublin Sessions Acts, 6 & 7 Vict. c. 81; Buckingham Summer Assizes Bill, 1849; Newgate Gaol (Dublin) Bill, 1849; Sheriff and Commissary Courts (Berwickshire) Bill, 1853; Cinque Ports Acts, 18 & 19 Vict. c. 48; 20 & 21 Vict. c. 1. Falmouth Quarter Sessions and Gaol Bill, 1865; 28 & 29 Vict. c. 8. Sussex County

but ordinarily they have been solicited, by the promoters, as private bills. In 1868, exception was taken to the Salford Hundred and Manchester Courts of Record Bill, on the ground that it ought to have been introduced as a public bill: but it was shown by the chairman of ways and means, that the rules and precedents of the house justified its introduction as a private bill.[1]

Public administration.

In 1839, three measures were passed, as public bills, for improving the police in Manchester, Birmingham, and Bolton,[2] the provisions being compulsory upon those towns, in the interest of public order, and the chief commissioners of police being appointed by the Crown.[3] In 1854, the Manchester Education Bill was introduced as a private bill: but on the second reading, an amendment was carried, declaring the subject to be one which ought not, at the present time, to be dealt with by any private bill.[4] In 1865, a private bill was brought in, to alter the licensing system at Liverpool. It was objected that as this bill proposed to deal with the public revenues, it ought not to have been introduced as a private bill: but as the bill was strictly local, and the clauses relating to licence duties were printed in italics, and reserved for the consideration of a committee of the whole house, it was held that the bill was not open to any technical objection requiring its withdrawal.[5] But on the second reading, an amendment was carried that the granting of licences for the sale of intoxicating liquors is a subject which ought not, at present, to be dealt with by any private bill.[6] Bills relating to the sale of intoxicating liquors on Sunday, in particular counties, have been introduced and treated as public bills.[7]

Business and Quarter Sessions Act, 1865; 28 & 29 Vict. c. 37. Chester Courts Bill, 1867; 30 & 31 Vict. c. 36; Glasgow Boundary Bill, 1871; Bath Prison Bill, 1871. The Belfast Municipal Boundaries Bill, 1853, was brought in as a public bill, but was otherwise treated as a private bill. County of Hertford and Liberty of St. Alban Bill, 1874.

[1] Hans. Deb. 10th March 1868.
[2] 2 & 3 Vict. cc. 87. 88, 95.
[3] Hans. Deb. 9th August 1839.
[4] See *supra*, p. 547.
[5] 177 Hans. Deb. 3rd Ser. 651.
[6] 120 Com. J. 92.
[7] Cornwall, 1882 and 1883; Durham, Yorkshire, Isle of Wight, Northumberland, 1883.

Religious communities.

In 1871, a bill for regulating the management of certain trust properties of the Presbyterian Church of Ireland, was introduced into the House of Lords as a private bill: but objection being taken to legislation upon such a subject by means of a private bill, the bill was withdrawn, and a public bill for effecting the same object was passed by both houses.[1] And, in the same session, the like proceedings occurred in the case of a bill to regulate the proceedings and powers of the Primitive Wesleyan Methodist Society of Ireland.

Other bills.

In 1848, the Farmers' Estate Society (Ireland) Bill having been brought in upon petition, the committee on the bill reported that the matter was so important that it ought to be dealt with as a public bill.[2]

Church property.

The distinction between two bills, of apparently the same character, is sometimes sufficient to constitute one a public, and the other a private bill. Thus, in 1855, the Carlisle Canonries Bill, which suspended the appointment to the next vacant canonry, and directed the ecclesiastical commissioners to pay the income to the augmentation of certain livings at Carlisle, was treated as a public bill; as it related to the ecclesiastical commissioners,—a public body holding certain church funds in trust for public purposes prescribed by law, and merely diverted the application of some of these funds from one purpose to another. On the other hand, the South Shields Parochial Districts Bill was held to be a private bill, as it sought to appropriate to local purposes, viz., the increase of certain small livings at South Shields, a sum of 15,000*l.*, to which the dean and chapter of Durham had become entitled by the sale of lands for the execution of certain public works. In 1871, the Rock of Cashel Bill was brought in as a public bill, vesting that rock, and the buildings and ruins thereon in trustees. Being referred to the examiners, it was held to be a private bill. But in the following year another bill, for the same objects, but empowering the church temporalities commissioners, and the secretary to the commissioners of public works in Ireland, with the consent of the lord lieu

[1] 204 Hans. Deb. 3rd Ser. 1968. [2] 103 Com. J. 782.

tenant, to transfer and assign the rock and buildings to trustees, was held to be a public bill, as it merely sought powers for public bodies, already having a statutory interest in the property. In 1873, exception was taken to the Union of Benefices Bill having been introduced as a public bill, on the ground that it amended the Union of Benefices Act, 23 & 24 Vict. c. 140, as to the City of London; but it was held to be properly a public bill.[1] Particular classes of local bills, for the confirmation of provisional orders, which would otherwise be included in the category of private bills, are directed, by statute, to be treated as public bills.[2]

Provisional order bills.

But a bill, commenced as a private bill, cannot be taken up and proceeded with as a public bill. In 1865, the promoters of the Middlesex Industrial Schools Bill, dissatisfied with some amendments relative to Roman Catholic chaplains, made in committee, determined to abandon it: whereupon Mr. Pope Hennessy gave notice that he should proceed with it as a public bill: but it was held that such a proceeding would be irregular, and was not persisted in.[3]

In 1877, notices were given of a private bill for settling a scheme of arrangement for the Turkish loans of 1854, 1855, and 1871: but its subject was obviously not one to be dealt with by a private bill, and it was not proceeded with.

Turkish loans.

It has been questioned whether a public Act may properly be repealed or amended by a private bill; and undoubtedly such provisions demand peculiar vigilance, lest public laws be lightly set aside for the benefit of particular persons or places. But no rule has been established which precludes the promoters of private bills from seeking the repeal or amendment of public Acts; and there are precedents in which this course has been sanctioned by Parliament. For example, in 1832, after the Bristol riots, a bill was passed to provide compensation for the damage suffered by many of the inhabitants, under which the public Act 7 & 8 Geo. IV. c. 31,

Repeal of public acts by private bills.

[1] 214 Hans. Deb. 3rd Ser. 282.
[2] See *infra*, pp. 760 *et seq.*
[3] Mr. Speaker Denison's Note-Book.

was amended in reference to that city.[1] Again, in 1864, the City of London Tithes Act repealed a public Act of Henry VIII.; and on the 18th July 1864, objection being taken, on the third reading of the Metropolitan District Railways Bill, that the Thames Embankment Act (a public or hybrid Act) was amended, the Speaker ruled that no such objection, in point of order, could be sustained.[2]

Public and private acts, prior to 1798.

With regard to Acts passed prior to 1798, when the division of local and personal Acts was first introduced into the statute book, it is difficult to determine whether Acts were, in fact, public or private, the only Acts included in the latter category being estate, divorce, naturalization, and other Acts of a personal character, while Acts for the making of roads, bridges, harbours, and other local improvements, which are now comprehended in the local and personal Acts, are found printed indiscriminately with other public Acts. These are eliminated from the revised edition of the statutes recently completed by the Statute Law Committee. And, since 1868, public Acts of a local character have been printed with the local Acts of each year.

Origin of private bills.

In treating of petitions, the origin of private bills has been already glanced at;[3] but it may be referred to again, in illustration of the distinctive character of such bills, and of the proceedings of Parliament in passing them. The separation of legislative and judicial functions is a refinement in the principles of political government and jurisprudence, which can only be the result of an advanced civilization. In the early constitution of Parliament these functions were confounded; and special laws for the benefit of private parties, and judicial decrees for the redress of private wrongs, being founded alike upon petitions, were not distinguished in principle or in form. When petitions sought obviously for remedies which the com-

[1] 2 & 3 Will. IV. c. lxxxviii. (local and personal).

[2] 176 Hans. Deb. 3rd Ser. 1619. But see debate in Lords, 28th June 1864, on second reading of Brokers' Bonds (City of London) Bill; 176 Ib. 408.

[3] See *supra*, p. 608.

mon law afforded, the parties were referred to the ordinary tribunals: but in other cases Parliament exercised a remedial jurisdiction. Other remedies of a more judicial character, and founded upon more settled principles, were at length supplied by the courts of equity; and from the reign of Henry IV., the petitions addressed to Parliament prayed, more distinctly, for peculiar powers beside the general law of the land, and for the special benefit of the petitioners. Whenever these were granted, the orders of Parliament, in whatever form they may have been expressed, were in the nature of private Acts; and after the mode of legislating by bill and statute had grown up in the reign of Henry VI.,[1] these special enactments were embodied in the form of distinct statutes.[2]

Peculiarity of proceedings on private bills.

Passing now to existing practice, the proceedings of Parliament, in passing private bills, are still marked by much peculiarity. A bill for the particular benefit of certain persons may be injurious to others; and to discriminate between the conflicting interests of different parties involves the exercise of judicial inquiry and determination. This circumstance causes important distinctions in the mode of passing public and private bills, and in the principles by which Parliament is guided.

Legislative functions of Parliament in passing public bills.

In passing public bills, Parliament acts strictly in its legislative capacity: it originates the measures which appear for the public good, it conducts inquiries, when necessary, for its own information, and enacts laws according to its own wisdom and judgment. The forms in which its deliberations are conducted are established for public convenience; and all its proceedings are independent of individual parties; who may petition, indeed, and are sometimes heard by counsel, but who have no direct participation in the conduct of the business, or immediate influence upon the judgment of Parliament.

[1] See *supra*, p. 520.

[2] See Statutes of the Realm, by Record Commission, 9 Hen. VI.

Its functions partly judicial in passing private bills.

In passing private bills, Parliament still exercises its legislative functions; but its proceedings partake also of a judicial character. The persons whose private interests are to be promoted, appear as suitors for the bill; while those who apprehend injury are admitted as adverse parties in the suit. Many of the formalities of a court of justice are maintained; various conditions are required to be observed, and their observance to be strictly proved; and if the parties do not sustain the bill in its progress, by following every regulation and form prescribed, it is not forwarded by the house in which it is pending. If they abandon it, and no other parties undertake its support,[1] the bill is lost, however sensible the house may be of its value. The analogy which all these circumstances bear to the proceedings of a court of justice, is further supported by the payment of fees, which is required of every party promoting or opposing a private bill, or petitioning for, or opposing, any particular provision. It may be added that the solicitation of a bill in Parliament has been regarded, by courts of equity, so completely in the same light as an ordinary suit, that the promoters have been restrained, by injunction, from proceeding with a bill, the object of which was held to be to set aside a covenant;[2] or

Suitors restrained by injunction.

[1] The Manchester and Salford Improvement Bill in 1828 was abandoned in committee, by its original promoters; when its opponents, having succeeded in introducing certain amendments, undertook to solicit its further progress. But in the Cork Butter Market Bill, the committee would not allow this course to be taken. *Minutes*, 1859, iii. 84. And, in 1873, the committee on the Kingstown Township Bill, after the commissioners, under their corporate seal, had withdrawn from its promotion, refused to allow them to proceed with it, as individual petitioners. In the Horncastle Gas Bill, 1876, the promoters and opponents agreed in soliciting the bill in an amended form. Minutes of Committee.

[2] North Staffordshire Railway Company, 1850. The injunction was afterwards dissolved; 5 Railway and Canal Cases, 691. On the 27th May 1869, the directors of the London, Chatham and Dover Railway Company were restrained by Vice-Chancellor Stuart from further promoting a bill, which had already passed the Commons, and had been read a first time in the House of Lords, and from using the seal of the Company for any such, or the like purpose ("Times," 28th May 1869). But on the 31st May the Lords

which was promoted by a public body, in evasion of the Towns Improvement Act, 1847.[1] Parties have also been restrained, in the same manner, from appearing as petitioners against a private bill pending in the House of Lords.[2] Such injunctions have been justified on the ground that they act upon the person of the suitor, and not upon the jurisdiction of Parliament; which would clearly be otherwise in the case of a public bill. And acting upon the same principles, Parliament has obliged a railway company, under penalty of a suspension of its dividends, to apply in the next session for a bill to authorise the construction of a line of railway which the company had pledged itself to make, and in good faith to promote it.[3]

Principles by which Parliament is guided.

This union of the judicial and legislative functions is not confined to the forms of procedure, but is an important principle in the inquiries and decision of Parliament, upon the merits of private bills. As a court, it inquires into, and adjudicates upon, the interests of private parties; as a legislature, it is watchful over the interests of the public. The promoters of a bill may prove, beyond a doubt, that their own interest will be advanced by its success, and no one may complain of injury, or urge any specific objection; yet, if Parliament apprehend that it will be hurtful to the community, it is rejected as if it were a public measure, or qualified by restrictive enactments, not solicited by the parties. In order to increase the vigilance of Parliament, in protecting the public interests, the chairman of the Lords' committees in one house, and the chairman of ways and means in the other, are entrusted with the peculiar care of unopposed bills, and with a general revision of all other private bills:

Justices discharged this order as not being justified by the circumstances of the case, while they acknowledged the authority of the court to make such an order, if the occasion should warrant it. 5 Chancery Appeals, 671.

[1] Kingstown Township Bill, 1873. See also *infra*, p. 862.

[2] Hartlepool Junction Railway; 100 Hans. Deb. 3rd. Ser. 784.

[3] South Western Railway, Capital and Works Act, 1855; 18 & 19 Vict. c. clxxxviii. ss. 62—69. See also Supplement to Votes, 1853, p. 945; Ib. 1855, p. 251.

while the agency of the government departments is also applied, in aid of the legislature.[1]

Private bills pass through the same stages.

In pointing out this peculiarity in private bills, it must, however, be understood, that while they are examined and contested before committees and officers of the house, like private suits, and are subject to notices, forms, and intervals, unusual in other bills; yet in every separate stage, when they come before either house, they are treated precisely as if they were public bills. They are read as many times, and similar questions are put, except when any proceeding is specially directed by the Standing Orders; and the same rules of debate and procedure are maintained throughout.

Proposed plan of describing the progress of private bills.

In order to explain clearly all the forms and proceedings to be observed in passing private bills, it is proposed to state them, as nearly as possible, in the order in which they successively arise. It will be convenient, for this purpose, to begin with the House of Commons; because, by the privileges of that house, every bill which involves any pecuniary charge or burthen on the people, by way of tax, rate, toll or duty, ought to be first brought into that house.[2] It has followed from this rule, that by far the greater number of private bills have hitherto, from their character, necessarily been passed first by the Commons. But the Commons have now resolved, "that this house will not insist on its privileges, with regard to any clauses in private bills, or in bills to confirm any provisional orders, or provisional certificates, sent down from the House of Lords, which refer to tolls and charges for services performed, and are not in the nature of a tax, or which refer to rates assessed and levied by local authorities for local purposes."[3] And this resolution has been held to extend to turnpike, harbour, drainage and other similar bills.[4] But it has been ruled not to extend to clauses in an improvement bill, imposing a tax upon all insurance

[1] See *infra*, pp. 808 *et seq.*

[2] See *supra*, pp. 521. 641 *et seq.*

[3] S. O. No. 226.

[4] Reading and Hatfield Road Bill, 1858; Wexford Harbour Bill, 1861, &c.

companies having policies upon houses within the borough. On the 8th May 1873, the Speaker called attention to clauses of this character in the Bradford Improvement Bill: but "as the promoters were not responsible for the introduction of the bill into the other house, and had signified their intention to withdraw these clauses, he submitted to the house that this course would be sufficient, under the circumstances, to repair the irregularity." And upon this condition the bill was allowed to proceed. This relaxation of the privileges of the Commons enables the promoters of many bills which must previously have been brought first into the Commons, to solicit them in the House of Lords, in the first instance, if they think fit. For many reasons, by far the greater number of private bills are still commenced in the Commons: but provision having been made, in 1858, for introducing, by arrangement, such bills into the Lords, as may be conveniently undertaken by that house,[1] Parliament has been able to ensure a more equal distribution of the private business of the session between the two houses. It will be more convenient, however, to pursue this description of bills in their progress through the Commons, and afterwards to follow them in their passage through the Lords. Those private bills which usually originate in the Lords, as naturalization, name, estate and divorce bills, will, for the same reasons, be more conveniently followed from the Lords to the Commons.

Private legislation superseded by public acts.

But before these classes of private bills are more particularly described, it will be necessary to advert to an important principle of modern legislation, by which special applications to Parliament for private Acts have, in numerous cases, been superseded by general laws. A private Act is an exception from the general law; and powers are sought by its promoters, which cannot be otherwise exercised, and which no other authority is able to confer. It is obvious, however, that the public laws of a country should be as comprehensive as may

[1] See *infra*, p. 808.

be consistent with the rights of private property: and it has accordingly been the policy of the legislature to enable parties to avail themselves of the provisions of public Acts, adapted to different classes of objects, instead of requiring them to apply to Parliament for special powers in each particular case. The same principle may be still further extended hereafter: but in all cases in which any special legislation is sought for, which is not within the scope of general laws, application must still be made to Parliament.

General acts enumerated.

The principal statutes relating to matters which had usually been the subjects of private Acts of Parliament may be briefly enumerated, in order to show the progress which has been made in this department of legislation.

Inclosures.

The earliest attempt to provide, by a general law, for the objects usually sought by the promoters of private bills, was that of the General Inclosure Act in 1801.[1] By that Act several provisions which had been usually inserted in each Act of inclosure were consolidated, and the necessary proofs before Parliament were facilitated, when such Acts were applied for: but the necessity of applying for separate Acts of inclosure was not superseded. In 1836, a general law was passed to facilitate the inclosure of open and arable land;[2] and in 1845, the Inclosure Commissioners were constituted, to whom have been entrusted many of the powers previously exercised by Parliament. In some cases they have authority, under public Acts,[3] to complete inclosures, while, in other cases, they make provisional orders for the inclosure of lands, to which legal effect is given, from time to time, by public Acts of Parliament.[4] Further provision was made by the Commons Inclosure Act, 1876, in regard to provisional orders for the inclosure of commons. Except, therefore, in any extraordinary and exceptional case, not provided for by

Commons.

[1] 41 Geo. III. c. 109.

[2] 6 & 7 Will. IV. c. 115.

[3] 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 11 & 12 Vict. c. 99; 12 & 13 Vict. c. 83; 17 & 18 Vict. c. 97, &c.

[4] 9 & 10 Vict. cc. 16. 117; 13 & 14 Vict. cc. 8. 66; 20 & 21 Vict. c. 31, &c.

these public Acts, a private Act of inclosure is now unnecessary.[1] Several general statutes have also been passed, to promote the drainage and improvement of land,[2] by which the agency of the Inclosure Commissioners and of other public boards and officers has been made available. Drainage of lands.

Applications to Parliament for the commutation of tithes, and other similar purposes, were frequent until the passing of the General Tithe Commutation Act, in 1836,[3] and the constitution of commissioners, by whom that and other general laws[4] for the commutation of tithes have been carried into execution. Tithes.

General Acts have also been passed to facilitate the enfranchisement of copyholds, and other manorial rights, the provisions of which are carried out by the copyhold and inclosure commissioners.[5] Enfranchisement of copyholds.

By several Acts, and lastly by the Companies Acts, 1862, 1867, and 1877, various powers and privileges may be secured by companies, which had previously formed the subjects of applications to Parliament. They may be incorporated, and may sue and be sued in the name of the company; and may also obtain limited liability for the shareholders; a privilege which has also been extended to joint stock banking companies.[6] So many powers, however, are still required by companies for special purposes, that applications to Parliament for incorporating and giving powers to companies are still frequent, independently of cases in which works are to be executed by public companies. For winding-up the affairs of joint stock companies, unable to meet their pecuniary Joint stock companies.

[1] For a return of the number of Inclosure Acts passed at different periods, and the acreage inclosed, see Sess. Paper, 1843 (325).

[2] 10 & 11 Vict. c. 32; 27 & 28 Vict. c. 72, Ireland; 9 & 10 Vict. c. 101; 10 & 11 Vict. c. 11; 11 & 12 Vict. c. 119; 11 & 12 Vict. c. 38 (113 Scotland); General Drainage Acts, 12 & 13 Vict. c. 100; 13 & 14 Vict. c. 31; Land Drainage Act, 1861, 24 & 25 Vict. c. 133; Improvement of Land Act, 1864, 27 & 28 Vict. c. 114; 31 & 32 Vict. c. 89, &c.

[3] 6 & 7 Will. IV. c. 71.

[4] 7 Will. IV. & 1 Vict. c. 69; 2 & 3 Vict. c. 62; 3 & 4 Vict. c. 15; 5 & 6 Vict. c. 54; 9 & 10 Vict. c. 73; 10 & 11 Vict. c. 104; 23 & 24 Vict. c. 93.

[5] 4 & 5 Vict. c. 35; 6 & 7 Vict. c. 23; 7 & 8 Vict. c. 55; 15 & 16 Vict. c. 51; 21 & 22 Vict. c. 94; 23 & 24 Vict. c. 59; 31 & 32 Vict. c. 89.

[6] 25 & 26 Vict. c. 89.

engagements, the extensive machinery of the court of chancery and of the court of bankruptcy were brought into operation, first by the "Winding-up Acts;" and since by several Joint Stock Companies Acts;[1] and similar provision has been made for winding-up the affairs of joint stock companies in Ireland.[2]

Railway companies.

By 9 & 10 Vict. c. 105, the commissioners of railways were constituted, to whom were transferred, by that Act, all the powers and duties which had previously been executed by the Board of Trade.[3] The primary object of their appointment was to secure the general supervision of existing railways, and to assist Parliament in its railway legislation. Further powers were subsequently conferred upon them, by which applications to Parliament, in certain cases, were rendered unnecessary. By 11 & 12 Vict. c. 3, railway companies which had obtained parliamentary powers for the construction of railways, were enabled, under certain conditions, to obtain from the commissioners of railways, instead of from Parliament, an extension of the time limited by their Acts, for the purchase of lands and the completion of works; and by 13 & 14 Vict. c. 83, and 32 & 33 Vict. c. 114, the agency of the commissioners, or Board of Trade, was made available, in the same manner, to facilitate the abandonment of railways and the dissolution of railway companies. By 14 & 15 Vict. c. 64, the Act constituting the commissioners of railways was repealed, and all their powers were transferred to the Board of Trade. Again, by 22 & 23 Vict. c. 59, and later Acts,[4] facilities were given for the settlement of differences between railway companies by arbitration, which might otherwise have formed the subject of private bills. By 27 & 28 Vict. cc. 120, 121, and 33 & 34 Vict. c. 19, facilities were given for obtaining further powers for the construction

Extension of time for purchase of lands, &c.

Abandonment of railways.

[1] 25 & 26 Vict. c. 89; 30 & 31 Vict. c. 131; 33 & 34 Vict. c. 104.

[2] 40 & 41 Vict. c. 57.

[3] 1 & 2 Vict. c. 98; 3 & 4 Vict. c. 97; 5 & 6 Vict. c. 55; 7 & 8 Vict. c. 85; 8 & 9 Vict. cc. 20. 96.

[4] 36 & 37 Vict. c. 48 (Constitution of Railway Commissioners); 37 & 38 Vict. c. 40.

of railways, through the agency of the Board of Trade. And in 1867, provision was made for the review and adjustment of the financial affairs of railway companies, without an application to Parliament.[1] Powers have also been granted, under public statutes, for the construction of tramways in Scotland[2] and Ireland.[3] And in 1870, facilities were given for the construction of tramways in England and Scotland, by means of provisional orders of the Board of Trade, to be confirmed by Parliament.[4]

Tramways.

Private Acts of Parliament for the establishment of small-debt courts, once very frequent, have been superseded, since 1846, by the establishment and regulation of county courts under general Acts. And by the Poor Law Amendment Act of 1834, and subsequent Acts for the general administration of the laws for the relief of the poor, private Acts for all purposes connected with the poor and poor rates, have been rendered unnecessary. But under the Poor Law Amendment Acts, 1867, 1868, and 1879, provisional orders of the Local Government Board are confirmed by public Acts.

Local courts.

Poor and poor rates.

Extensive provision for the lighting, watching, paving, cleansing, improving, and sanitary regulation of towns, has also been made by means of public Acts. In 1833 an Act was passed[5] to enable the ratepayers to make arrangements for the lighting and watching of their parishes. In 1828 an important Act was passed for the lighting, watching, and cleansing of towns in Ireland,[6] the provisions of which, as since amended,[7] have been adopted by several towns. By the 34 & 35 Vict. c. 109, more extended provision was made for the local government of towns in Ireland, by means of provisional orders, to be confirmed by Parliament. By 35 & 36 Vict. c. 69, the local government board in Ireland was constituted for the administration of these Acts. More

Lighting, watching, police, and improvement of towns.

[1] 30 & 31 Vict. c. 127.

[2] 24 & 25 Vict. c. 69.

[3] 23 & 24 Vict. c. 152; 24 & 25 Vict. c. 102; 34 & 35 Vict. c. 114.

[4] 33 & 34 Vict. c. 78.

[5] 3 & 4 Will. IV. c. 90 (a previous act, 11 Geo. IV. c. 27, was thereby repealed).

[6] 9 Geo. IV. c. 82.

[7] 3 & 4 Vict. c. 88; 6 & 7 Vict. c. 93; 28 & 29 Vict. c. 90, &c.

extended powers and facilities were afforded by the Public Health (Ireland) Act, 1874; and these several provisions were consolidated and amended by the Public Health (Ireland) Act, 1878, under which numerous provisional orders have been confirmed by Parliament.

Public Health and Local Government Acts.

By the Public Health Acts[1] the general board of health was constituted, by whom were exercised important powers of local inquiry and provisional legislation, for the paving and sewerage of towns, the supply of water, and other local improvements. In certain cases, the provisions of the Public Health Act were applied, on the report of the board of health, by her Majesty in council; and, in other cases, the provisional orders of the board were confirmed, from time to time, by Parliament, in public Acts.[2] By 21 & 22 Vict. c. 97, the powers previously exercised by that board, for the protection of the public health, were vested in the Privy Council, and in the following year were made perpetual.[3] And by the Local Government Acts, 1858 and 1861,[4] still more extensive powers of local government were granted to towns, independently of Parliament, except in particular cases in which provisional orders of the secretary of state, whose authority, for some time, superseded that of the general board of health, required to be confirmed. By the 34 & 35 Vict. c. 70, the local government board was constituted, to which were transferred the functions of the secretary of state and Privy Council concerning the public health, together with the powers and duties of the Poor Law Board. By the Public Health Act, 1872, provision was made for the granting of provisional orders concerning the public health and local government, by that board, to be confirmed by Parliament. And by the Public Health Act, 1875, these several provisions were consolidated and amended, and further powers given to the local government board. Provision by general law[5] is

Improvement of towns in Scotland.

[1] 11 & 12 Vict. c. 63; 17 & 18 Vict. c. 95 (both since repealed).

[2] 12 & 13 Vict. c. 94; 13 & 14 Vict. cc. 32. 90. 108.

[3] 22 & 23 Vict. c. 3.

[4] Amended by 26 Vict. c. 17.

[5] 13 & 14 Vict. c. 33; 23 & 24 Vict. c. 96; 31 & 32 Vict. c. 102; 39 & 40 Vict. c. 25.

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also made for regulating the police of towns and populous places in Scotland, and for paving, draining, cleansing, lighting, and improving them: but in the improvement of towns so many special powers become necessary, in particular localities, which Parliament alone can confer, that application for private Acts, for that purpose, are still numerous, and form a very important branch of private legislation.

Artisans and labourers' dwellings.

By the Artisans and Labourers' Dwellings Improvement Acts, 1875—1882, local authorities were empowered, by means of provisional orders made by the Secretary of State, and confirmed by Parliament, to pull down unhealthy houses, courts and alleys, and to provide for the reconstruction of suitable dwellings for the working classes. And by another Act similar provision was made for Scotland.[1]

Gas and water works.

By the 33 & 34 Vict. c. 70,[2] facilities were given for obtaining powers for the construction of gas and water works, and for the supply of gas and water by means of provisional orders granted by the Board of Trade, and confirmed by Parliament; but this Act does not apply to any place within the metropolis.

Electric Lighting Act, 1882.

In 1882, provision was made by the 44 & 45 Vict. c. 56, for the granting of licences for electric lighting by the Board of Trade, under certain conditions, and of provisional orders for the like purpose, subject to confirmation by Parliament.

Piers and harbours and pilotage.

By the General Pier and Harbour Act, 1861,[3] provision has been made for the construction of piers and harbours, under provisional orders of the Board of Trade, confirmed by public Acts of Parliament. Under the Merchant Shipping Act, 1862, provisional orders may be obtained, in like manner, concerning pilotage;[4] and under the Oyster and Mussel Fisheries Act, 1866, the Board of Trade were empowered to grant provisional orders for the establishment, improvement

Oyster and mussel fisheries.

[1] Artisans, &c. Dwellings (Scotland) Act, 1875.

[2] Amended by 36 & 37 Vict. c. 89.

[3] Amended by 25 & 26 Vict. cc. 19, 69.

[4] 25 & 26 Vict. c. 63, s. 39.

Clam and bait beds, &c.

and maintenance of oyster and mussel fisheries.[1] Similar provisions were made in 1881, by the Sea Fisheries (Clam and Bait Beds) Act, and by the Alkali, &c. Works Act, for obtaining provisional orders.

Turnpike trusts and highways.

By 14 & 15 Vict. c. 38, the secretary of state was empowered to make provisional orders for reducing the rate of interest, and for extinguishing arrears of interest charged on turnpike roads, which provisional orders were confirmed from time to time by public Acts of Parliament. In 1871, these powers of the secretary of state were transferred to the Local Government Board. General Acts are also annually passed for continuing Turnpike Acts which are about to expire; by which numerous applications for private bills are avoided. Under the Highways and Locomotives Act, 1878, provisional orders of the Local Government Board are confirmed by public Acts.

Roads and bridges (Scotland).

By the Roads and Bridges (Scotland) Act, 1878, counties were enabled, by means of provisional orders, to acquire extensive powers for the maintenance and management of their roads and bridges.

Provisional orders not requiring confirmation.

Under several statutes, provisional orders may come into operation without express confirmation by Parliament.[2] By the Endowed Institutions (Scotland) Act, 1878, the secretary of state is empowered to issue provisional orders, which are to be laid before both Houses of Parliament, and, if not disapproved of by either house within forty days, are to come into operation. And in other cases, certain ecclesiastical and educational schemes are laid before Parliament, and if not disapproved of within the time prescribed by statute, require confirmation by an order of council before they come into operation.[3]

Constabulary Acts.

The establishment of a police force, and police regulations,

[1] See also 40 & 41 Vict. c. 42.

[2] Elementary Education Acts, 1870, 1876; Endowed Schools Act, 1873; Education (Scotland) Act, 1872; Prison Acts, 1877; Factory and Workshops Act, 1878, &c.

[3] Union of Benefices Act, 23 & 24 Vict. c. 142; Universities of Oxford and Cambridge Act, 40 & 41 Vict. c. 50.

in English counties and boroughs, has been provided for by general constabulary Acts.[1]

Settled Land Act, 1882.

By the Settled Land Act, 1882, tenants for life are invested with many powers which had hitherto been conferred by private estate Acts.

Entailed estates in Scotland.

By several Acts affecting entailed estates in Scotland,[2] numerous complicated estate Acts have been rendered unnecessary, as the matters which had been previously provided for by private legislation, are now within the operation of the general law.

Incumbered estates in Ireland.

By the Act to facilitate the sale of incumbered estates in Ireland,[3] commissioners were entrusted with powers which could not otherwise have been exercised without the authority of private Acts of Parliament; and the Landed Estates Court, Ireland, is now invested with still more general powers for the sale and transfer of land, whether incumbered or unincumbered.[4]

Naturalization of aliens.

By 33 & 34 Vict. c. 14, aliens are enabled to obtain certificates of naturalization from the secretary of state, which confer the same privileges as those which were formerly secured by special naturalization Acts.[5]

Elementary Education Act, 1870.

By the Elementary Education Act, 1870, provision is made for the compulsory purchase of school sites, by virtue of provisional orders granted by the education department, and confirmed by Parliament.

Divorce Acts.

And, in conclusion, it may be added, with satisfaction, that applications to Parliament for divorce Acts, have, at length, been nearly superseded by the establishment of a court for divorce and matrimonial causes, which has authority to dissolve marriages in England.[6]

[1] 2 & 3 Vict. c. 93; 3 & 4 Vict. c. 88; 19 & 20 Vict. c. 69; 22 & 23 Vict. c. 32.

[2] 10 Geo. III. c. 51; 5 Geo. IV. c. 87; 3 & 4 Vict. c. 48; 11 & 12 Vict. c. 36; 38 & 39 Vict. c. 61.

[3] 11 & 12 Vict. c. 48.

[4] 21 & 22 Vict. c. 72, &c.

[5] See also *infra*, Chap. XXVII.

[6] 20 & 21 Vict. c. 85, amended by 22 & 23 Vict. c. 61; 23 & 24 Vict. c. 144; 36 & 37 Vict. c. 31, &c. As the act is limited to England, persons beyond the jurisdiction of the court, in Ireland, India, and elsewhere, in some few cases, have still applied for Divorce Acts.

CHAPTER XXV.

CONDITIONS TO BE OBSERVED BY PARTIES BEFORE PRIVATE BILLS ARE INTRODUCED INTO PARLIAMENT. PROOF OF COMPLIANCE WITH THE STANDING ORDERS.

The two classes of private bills.

For the purposes of the Standing Orders of both houses, all private bills to which the Standing Orders are applicable, are divided into the two following classes, according to the subjects to which they respectively relate:—

1st Class.

1st Class:

Burial-ground, making, maintaining, or altering.
Charters and corporations, enlarging or altering powers of.
Church or chapel, building, enlarging, repairing, or maintaining.
City or town, paving, lighting, watching, cleansing, or improving.
Company, incorporating or giving powers to.
County rate.
County or shire hall, court house.
Crown, church, or corporation property, or property held in trust for public or charitable purposes.
Ferry, where no work is to be executed.
Fishery, making, maintaining, or improving.
Gaol, or house of correction.
Gas work.
Land, inclosing, draining, or improving.
Letters patent, confirming, prolonging, or transferring the term of.
Local court, constituting.
Market, or market place, erecting, improving, repairing, maintaining, or regulating.
Police.
Poor, maintaining or employing.
Poor rate.
Powers to sue and be sued, conferring.
Stipendiary magistrate, or any public officer, payment of; and
Continuing or amending an Act passed for any of the purposes included in this or the second class, where no further work than such as was authorized by a former Act, is proposed to be made.

2nd Class.

2nd Class:

Making, maintaining, varying, extending, or enlarging any

- Aqueduct.
- Archway.
- Bridge.
- Canal.
- Cut.
- Dock.
- Drainage,—where it is not provided in the bill that the cut shall not be of more than eleven feet wide at the bottom.
- Embankment for reclaiming land from the sea, or any tidal river.
- Ferry, where any work is to be executed.
- Harbour.
- Navigation.
- Pier.
- Port.
- Railway.
- Reservoir.
- Sewer.
- Street.
- Tramway.
- Tunnel.
- Turnpike or other public carriage road.
- Waterwork.

Requirements of the Standing Orders.

The requirements of the Standing Orders which are to be complied with by the promoters of such private bills before application is made to Parliament, were conveniently arranged by the Commons, in 1847, in the following order; and a similar arrangement has since been adopted by the House of Lords:

"1. Notices by advertisement. 2. Notices and applications to owners, lessees, and occupiers of lands and houses. 3. Documents required to be deposited, and the times and places of deposit. 4. Form in which plans, books of reference, sections, and cross sections shall be prepared. 5. Estimates and deposit of money, and declarations in certain cases."

Similarity of the Orders of Lords and Commons.

The requirements of the two houses, under each of these divisions, are now, *mutatis mutandis*, nearly identical.[1] Their convenient arrangement and general similarity, render unnecessary their insertion in this work; and no version of them can, at any time, be safely relied upon by the promoters of bills, except the last authorized edition.[2]

[1] They are also numbered alike, from No. 1 to No. 68.

[2] The Standing Orders were printed, at length, in the first edition of this work, for the sake of improving their arrangement, and pointing out the numerous discrepancies between the orders of the two houses; but as the orders of both houses were afterwards assimilated, and arranged nearly in conformity with the plan there adopted, they were omitted in the second and each succeeding edition.

Provisional order bills.

It may here be explained that, as certain documents are required to be deposited in reference to bills for confirming provisional orders and certificates,[1] such deposits are required to be proved in the same manner, as compliance with the Standing Orders relating to private bills.

Preparing bills.

In preparing their bills for deposit, the promoters must be careful that no provisions be inserted which are not sufficiently alluded to in the notices, or which otherwise infringe the Standing Orders. If the bill be for any of the purposes provided for by the Consolidation Acts,[2] so much of those Acts as may be applicable, is to be incorporated; and the bill is otherwise to be drawn in general conformity with the model bills, by which the best forms are prescribed.

Consolidation Acts.

Preliminary Inquiries Act.

By the Preliminary Inquiries Act, 1851,[3] amended by the Harbours Transfer Act, 1862, the promoters of private bills, in which power is sought to construct works on tidal lands, or affecting navigation, may also be required by the Board of Trade to deposit such statements and other documents as may be necessary to explain the objects of their intended application, in addition to the documents required by the Standing Orders of either House of Parliament, to be deposited at the Admiralty and Board of Trade. This requirement is wholly independent of the Standing Orders of either house: but the proceedings under the Act may come, at a later period, under the notice of Parliament.[4]

Proof of compliance.

Compliance with the Standing Orders was formerly re-

[1] S. O. No. 39.

[2] Companies Clauses, Lands Clauses, and Railways Clauses Consolidation Acts, 1845, 1860, 1863 and 1869; Land Clauses Consolidation Act, 1869; Companies Clauses Acts, 1867 and 1877; Companies Clauses and Lands Clauses (Scotland) Acts, 1845; the Railways Acts (Ireland), 1851, 1860, and 1864; Markets and Fairs Clauses, Gasworks Clauses, Commissioners Clauses, Waterworks Clauses, Harbours and Docks Clauses, Towns Improvement Clauses, Cemetery Clauses, Telegraph Clauses, and Police Clauses Consolidation Acts, 1847, 1863, and 1871. See Bigg, Clauses Consolidation Acts. These Acts, as stated in the preambles, were passed, "as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertaking, as for ensuring greater uniformity in the provisions themselves."

[3] 14 & 15 Vict. c. 49. By this Act the preliminary inquiries under the commissioners of woods and forests were discontinued.

[4] See *infra*, p. 808.

quired to be separately proved,—in the Commons before the examiners of petitions for private bills,—and in the Lords before the Standing Order committee. The parties were thus subjected to the heavy expense of proving them twice over, with an interval of some months between the proofs. But in 1854, the Lords adopted a most convenient arrangement, which dispensed with a double proof of all those orders which were common to both houses, except in certain cases. Their lordships resolved, "that there shall be one or more officers of this house, to be called 'the examiners for Standing Orders,' who shall examine into certain facts required to be proved before the Standing Order committee;" and appointed as examiners, for the ensuing session, the gentlemen who held the office of examiners of petitions in the House of Commons. By this arrangement, the examiners were enabled to take the evidence on behalf of both houses simultaneously; and in 1858, the Lords entrusted to the examiners the same powers which they had previously exercised for the Commons. The examiners, therefore, acting on behalf of both houses, now adjudicate upon all facts relating to the compliance or non-compliance with the Standing Orders; and the Standing Orders committee in each house determines, upon the facts as reported or certified by them, whether the Standing Orders ought or ought not to be dispensed with. Of all the improvements connected with private bill legislation, none have been so signal as those in which the examiners were constituted, and both houses concurred for the assimilation and joint proof of their Standing Orders.

Examiners for Standing Orders in the Lords.

The two examiners, appointed by the House of Lords and by Mr. Speaker, conduct, for both houses, the investigations which were formerly carried on, in the Commons, by the sub-committees on petitions for private bills, and, in the Lords, by the Standing Order committee. It will, however, be convenient to assume, for the present, that bills are to be first solicited in the Commons, though the proofs of compliance with the Standing Orders of both houses are taken simultaneously.

Examiners of both houses.

General list of petitions.

When all the petitions for private bills, with printed copies of the bills annexed, have been deposited, on or before the 21st December, in the private bill office of the House of Commons, and printed copies of the bills in the Parliament office of the House of Lords, on or before the 17th December,[1] the "General List of Petitions" is made out in the order of their deposit, and each petition is numbered. The regulations by which that list is made out, give every facility to the promoters of bills to select for themselves whatever position may be most convenient. If they secure an early number on the list, their petitions will be heard by the examiners shortly after the commencement of their sittings. If, on the other hand, they desire their case to be heard at a later period, they may place their petition lower down in the list.[2] As the examination for both houses is conducted at the same time, the order in which the cases are heard for the Lords is determined by the general list of petitions, which is prescribed by the Commons only.

Memorials complaining of non-compliance.

When the time has expired for depositing documents, and complying with other preliminary conditions, the parties interested are enabled to judge whether the Standing Orders of the two houses have been complied with; and if it should appear to them that the promoters have neglected to comply with any of them, they may prepare memorials complaining of such non-compliance. These memorials are to be deposited in the private bill office of the House of Commons, according to the position of the petition for the bill to which they relate, in the general list.

When to be deposited.

"If the same relate to petitions for bills numbered in the general lists of petitions;

From		
1 to 100	They shall be deposited on or before	Jan. 9.
101 to 200		,, 16.
201 and upwards		,, 23.

And in the case of any petition for bills which may be deposited by

[1] Lords' S. O. No. 32.

[2] See Mr. Speaker's printed regulations for the deposit of petitions in the private bill office, and for determining the order in which they will be heard.

leave of the house after the 21st December, such memorials shall be deposited three clear days before the day first appointed for the examination of the petition.

All memorials are to be deposited in the private bill office of the House of Commons before six o'clock on any day on which the house shall sit, and before two when the house shall not sit; and two copies are also to be deposited for the use of the examiners, before twelve o'clock on the following day. The time within which memorials are to be deposited, in the Lords, is not prescribed by the Standing Orders of that house: but the examiners require such deposit to conform with the orders of the Commons; the hearing of memorials on behalf of both houses, at the same time, being indispensable.

How prepared.

These memorials are prepared in the same form, and are subject to the same general rules as petitions to the house,[1] as well as to other special rules, which will be noticed hereafter. When the time for depositing memorials has expired, the opposed and unopposed petitions are distinguished in the general list; and the petitions are set down for hearing before the examiners, in the order in which they stand in the general list, precedence being given, whenever it may be necessary, to unopposed petitions.

Opposed and unopposed petitions distinguished.

By the Standing Orders,[2]

Dissentient shareholders.

"In case any proprietor, shareholder or member of or in any company, association or co-partnership, shall by himself or any person authorized to act for him in that behalf, have dissented at any meeting called in pursuance of Standing Orders 62 to 66, such proprietor, shareholder or member shall be permitted to be heard by the examiner of petitions, on the compliance with such Standing Orders, by himself, his agent and witnesses, on a memorial addressed to the examiner, such memorial having been duly deposited in the Private Bill Office."

Sittings of the examiners.

The public sittings of the examiners commence on the 18th of January, being about a fortnight before the usual time for the meeting of Parliament.

[1] See *supra*, p. 610 *et seq.*

[2] S. O. No. 75.

Notice of examination.

One of the examiners is required to give at least seven clear days' notice, in the Private Bill Office of the Commons, of the day appointed for the examination of each petition; and, practically, a much longer notice has been given, as, for the convenience of all parties concerned, the examiners give notices for the first hundred petitions on the 10th January, and for the second hundred on the 17th January, being, in each case, the day after the memorials relating to such petitions have been deposited.

Daily lists of petitions.

In order to facilitate the examination of unopposed petitions, the daily lists of cases set down for hearing before each of the examiners are divided into "unopposed" and "opposed" petitions; and the former are placed first on each day. By this arrangement all the cases are appointed to be heard according to their order in the "general list of petitions:" but precedence is given, on each day, to the unopposed petitions. These are disposed of, and the numerous agents and witnesses relieved from attendance during the subsequent hearing of opposed cases, which often occupy a considerable time.

Petitions struck off the list.

In case the promoters shall not appear at the time when their petition comes on to be heard, the examiner is required, by the Standing Orders, to strike the petition off the general list of petitions. The petition cannot afterwards be re-inserted on the list, except by order of the house; and if the promoters should desire to proceed with the bill, it will be necessary to

How to be re-inserted.

deposit a petition, praying that the petition may be re-inserted, and explaining the circumstances under which it had been struck off. This petition will stand referred to the Standing Orders Committee, who will determine, upon the statement of the parties, whether the promoters have forfeited their right to proceed or not, and will report to the house accordingly. If the petition for the bill should be re-inserted in the general list, the usual notice will be given by the examiner, and the case will be heard at the appointed time.

Statement of proofs.

When the case is called on, the agent soliciting the bill

appears before the examiner with a "statement of proofs," showing all the requirements of the Standing Orders, applicable to the bill, which have been complied with, and the name of every witness, opposite each proof, who is to prove the matters stated therein. If the bill be opposed on Standing Orders, the agents for the memorialists are required to enter their appearances[1] upon each memorial, at this time, in order to entitle them to be subsequently heard. In the meantime the "formal proofs," as they are termed, proceed generally in the same manner, both in opposed and unopposed cases. Each witness is examined by the agent, and produces all affidavits and other necessary proofs, in the order in which they are set down in the statement;[2] and in addition to the proofs comprised in the statement, the examiner requires such other explanations as he may think fit, to satisfy him that all the orders of the house have been complied with.

Appearances on memorials entered.

Formal proofs.

Under the Standing Orders of both houses, "the examiner may admit affidavits in proof of the compliance with the Standing Orders of the house, unless in any case he shall require further evidence; and such affidavit shall be sworn, if in England, before a justice of the peace; if in Scotland, before any sheriff depute or his substitute; and if in Ireland, before any judge or assistant barrister, or before a justice of the peace."

Proof by affidavit.

In an unopposed case, if the Standing Orders have been complied with, the examiner at once indorses the petition, addressed to the Commons, accordingly: and forwards to the Lords a certificate to the same effect. If not, he certifies, by indorsement on the petition, that the Standing Orders have not been complied with, and also reports to the House of Commons, and certifies to the House of Lords, the facts upon which his decision is founded, and any special circumstances

Unopposed cases.

[1] The appearance is a paper, which is previously obtained from the private bill office, certifying that the agent has entered himself at that office, as agent for the memorial. This appearance is given to the committee clerk. See also *infra*, p. 781.

[2] One fair copy of such statement is required for the examiner, and another for the committee clerk.

In opposed cases.

connected with the case. In an opposed case, when the formal proofs have been completed, the examiner proceeds to hear the memorialists. The agents for the latter ordinarily take no part in the proceedings upon the formal proofs: but if they desire that any of the promoters' witnesses, who have proved the deposit of documents, the service of notices, or other matters, should be detained for further examination, in reference to allegations of error, contained in the memorials, the examiner directs them to be in attendance until their evidence shall be required. By the Standing Orders of both houses, any parties are entitled to appear and to be heard, by themselves, their agents and witnesses, upon a memorial addressed to the examiner, complaining of non-compliance with the Standing Orders, provided the matter complained of be specifically stated in such memorial, and the party (if any) who may be specially affected by the non-compliance with the Standing Orders have signed such memorial, and shall not have withdrawn his signature thereto, and such memorial have been duly deposited.

Memorials complaining of non-compliance.

Attendance of witnesses.

The attendance of witnesses is ordinarily secured by the parties themselves; but if the examiner should report to the house that the attendance of any necessary witness, or the production of any document, cannot be procured without the intervention of the house, the house will make an order accordingly.[1]

Specific statements of non-compliance.

Unless the matters complained of be specifically stated in the memorial, the memorialists are not entitled to be heard, and the utmost care is consequently required in drawing memorials. When a memorial complains of more than one breach of the Standing Orders, it is divided into distinct allegations. Each allegation should specifically allege a non-compliance with the Standing Orders, and should state the circumstances of such alleged non-compliance, in clear and accurate language.

Preliminary objections.

When the agent for a memorial arises to address the examiner, the agent for the bill may raise preliminary objec-

[1] Wandle Waterworks, 1853; 108 Com. J. 257; 121 Ib. 114. 127.

tions to his being heard upon the memorial, on any of the grounds referred to in the Standing Orders, or on account of violations of the rules and usage of Parliament, or other special circumstances. Such objections are distinct from any subsequent objections to particular allegations. It has been objected, for example, that a memorial has not been duly signed, so as to entitle the parties to be heard. No proof of the signatures, however, is required in any case, unless there should be some *primâ facie* reason for doubting their genuineness. The same rule is applied to the affixing of a corporate seal. On the 16th February 1846, an instruction was given to the select committee on petitions for private bills not to hear parties on any petition "which shall not be prepared in strict conformity with the rules and orders of this house."[1] And as memorials addressed to the examiner have supplied the place of petitions to the house, complaining of non-compliance with the Standing Orders, the examiners have applied to them all the parliamentary rules applicable to petitions; and have otherwise followed the practice of the sub-committees on petitions for private bills.

Memorials subject to same rules as petitions.

If no preliminary objection be taken to the general right of the memorialists to appear and be heard, or if it be overruled, the agent proceeds to read the first allegation in his memorial. Preliminary objections may be raised to any allegation; as that it alleges no breach of the Standing Orders: that it is uncertain, or not sufficiently specific, or that the party specially affected has not signed the memorial, or has withdrawn his signature. In reference to the latter grounds of objection it may be explained that by numerous decisions of sub-committees and of the examiners, the signatures of parties specially affected are required in reference to such allegations only as affect parties personally, and in which the public generally have no interest. Thus if it be alleged that the name of any owner, lessee, or occupier of

Preliminary objections to allegations.

Parties specially affected.

[1] 101 Com. J. 147.

property has been omitted from the book of reference, or that he has received no notice, the examiner will not proceed with the allegation, unless the party affected has himself signed the memorial. But in the application of this rule, considerable niceties often arise from the peculiar circumstances of each case.

Public objections.

There are numerous grounds of objection which relate to matters concerning the public, and do not therefore require the signatures of parties specially affected. Thus objections to the sufficiency of newspaper notices; to the accuracy of the plans, sections, and books of reference, where the errors alleged are patent upon such documents, or are separable from questions relating to property in lands and houses, have always been treated as public objections. The same principle has been applied to objections to the estimate, deposit of money, or declaration; and to allegations that any documents have not been deposited in compliance with the Standing Orders. It is for public information and protection that all requirements of this character are to be complied with by the promoters of the bill; and any person is therefore entitled to complain of non-compliance on behalf of the public, without proving any special or peculiar interests of his own.

Questions of merits excluded.

Allegations are to be confined to breaches of the Standing Orders, and may not raise questions impugning the merits of the bill, which are afterwards to be investigated by Parliament, and by committees of either house. It may be shown, for example, that an estimate is informal; and not such an estimate as is required by the Standing Orders; but the insufficiency of the estimate is a question of merits, over which the examiner has no jurisdiction. Again, in examining the accuracy of the section of a proposed railway, the examiner will inquire whether the surface of the ground be correctly shown, or the gradients correctly calculated: but he cannot entertain objections which relate to the construction of the work, its engineering advantages, its expense, or other similar matters, which will be afterwards considered by the committee on the bill.

The examiner decides upon each allegation, and, whenever it is necessary, explains the grounds of his decision. When all the memorials have been disposed of, he endorses the petition, and if the Standing Orders have not been complied with, he makes a report to one house, and a certificate to the other, as already stated. In case he should feel doubts as to the due construction of any Standing Order, in its application to a particular case, he may make a special report of the facts to both houses, without deciding whether the Standing Order has been complied with or not.

Decision and report and certificate of the examiner.

When the petition has been endorsed by the examiner, it is returned to the private bill office, where the agent can obtain it, in order to arrange for its presentation to the House of Commons, by a member. In case the bill should originate in the House of Lords, the petition is retained in the private bill office; and the examiner makes a report to the House of Commons, as to the compliance, or non-compliance, with the Standing Orders.[1]

Petition to be presented to the Commons.

All the proceedings preliminary to the application to Parliament being thus completed, the further progress of a private bill in the House of Commons is reserved for the next chapter.

Where a dissolution of Parliament is anticipated before the private business of the session has been disposed of, it has been customary to make orders, enabling the promoters of private bills to suspend further proceedings, and to afford facilities for proceeding with the same bills, without repeating proofs of compliance with Standing Orders, or other unnecessary formalities, in the next session. The orders made in 1859 and 1880, for this purpose, were peculiarly simple and effectual, and will probably be followed on similar occasions, to the exclusion of earlier precedents.[2] In 1871, the Tramways (Metropolis) Bills were suspended in a similar manner, in order to be proceeded with in the next session.[3]

Bills suspended, and proceeded with in another session.

[1] S. O. No. 77.

[2] 11th April 1859, 114 Com. J. 165; 11th March 1880, 135 Com. J. 95. 111.

[3] 126 Com. J. 335; 35 & 36 Vict. c. 43.

CHAPTER XXVI.

COURSE OF PROCEEDINGS UPON PRIVATE BILLS INTRODUCED INTO THE HOUSE OF COMMONS; WITH THE RULES, ORDERS, AND PRACTICE APPLICABLE TO EACH STAGE OF SUCH BILLS IN SUCCESSION, AND TO PARTICULAR CLASSES OF BILLS.

Progress of private bills in the Commons.

THE further progress of a private bill through the House of Commons will now be followed, step by step, precisely in the order in which particular rules are to be observed by the parties, or enforced by the house or its officers: but this statement of the various forms of procedure may be introduced by a few observations explanatory of the general conduct of private business in the House of Commons.

Parliamentary agents.

I. Every private bill or petition is solicited by an agent, upon whom various duties and responsibilities are imposed by the orders of the house. The rules laid down by the Speaker, by authority of the house, in 1837, and revised in 1873, are to the following effect:

Declaration and recognizance.

1. "No person shall be allowed to act as a parliamentary agent until he shall have subscribed a declaration before one of the clerks in the private bill office, engaging to observe and obey the rules, regulations, orders, and practice of the House of Commons, and also to pay and discharge from time to time, when the same shall be demanded, all fees and charges due and payable upon any petition or bill upon which such agent may appear; and after having subscribed such declaration, and entered into a recognizance or bond (if hereafter required), in the penal sum of 500*l.*, conditioned to observe the said declaration, such person shall be registered in a book to be kept in the private bill office, and shall then be entitled to act as parliamentary agent: Provided that upon the said declaration, recognizance or bond and registry, no fee shall be payable."

Form.

2. "The declaration before mentioned, and the recognizance and bond, if hereafter required, shall be in such form as the Speaker may from time to time direct."

3. "One member of a firm of parliamentary agents may subscribe

the required declaration on behalf of his firm; but the names of all the partners of such firm shall be registered with such declaration; and notice shall be given, from time to time, to the clerks of the private bill office, of any addition thereto, or change therein."

4. "No person shall be allowed to be registered as a parliamentary agent, unless he is actually employed in promoting or opposing some private bill or petition, pending in Parliament."

5. "When any person (not being an attorney, or solicitor, or writer to the signet) applies to qualify himself, for the first time, to act as a parliamentary agent, he shall produce to one of the clerks of the private bill office a certificate of his respectability from a member of Parliament, or a justice of the peace, or a barrister-at-law, or an attorney, or solicitor."

Appearance to be entered upon bills.

6. "No notice shall be received in the private bill office for any proceeding upon a petition for a bill, or upon a bill brought from the Lords (after such bill has been read a first time), until an appearance to act as the parliamentary agent upon the same shall have been entered in the private bill office; in which appearance shall also be specified the name of the solicitor (if any) for such petition or bill."

Appearance to be entered on petitions against bills.

7. "Before any party shall be allowed to appear or be heard upon any petition against a bill, an appearance to act as the parliamentary agent upon the same shall be entered in the private bill office; in which appearance shall also be specified the name of the solicitor, and of the counsel who appear in support of any such petition (if any counsel or solicitor are then engaged), and a certificate of such appearance shall be delivered to the parliamentary agent, to be produced to the committee clerk."

A fresh appearance on change of parliamentary agent.

8. "In case the parliamentary agent for any petition or bill shall be displaced by the solicitor thereof, or such parliamentary agent shall decline to act, the responsibility of such agent shall cease, upon a notice being given in the private bill office, and a fresh appearance shall be entered upon such petition or bill."

Agents personally responsible.

9. "Every agent conducting proceedings in Parliament before the House of Commons shall be personally responsible to the house, and to the Speaker, for the observance of the rules, orders, and practice of Parliament, as well as of any rules which may from time to time be prescribed by the Speaker, and also for the payment of the fees and charges due and payable to the officers of the House of Commons."

Speaker may, on misconduct, prohibit agent from practising.

10. "Any parliamentary agent who shall wilfully act in violation of the rules and practice of Parliament, or of any rules to be prescribed by the Speaker, or who shall wilfully misconduct himself in prosecuting any proceedings before Parliament, shall be liable to an absolute or temporary prohibition to practise as a parliamentary agent, at the pleasure of the Speaker; provided that upon the application of such parliamentary agent, the Speaker shall state in writing the grounds for such prohibition."

11. "No person who has been prohibited from practising as a parliamentary agent, or struck off the rolls of attorneys or solicitors, or disbarred by any of the inns of court, shall be allowed to be registered as a parliamentary agent, without the express authority of the Speaker."

12. "No written or printed statement relating to any private bill shall be circulated within the precincts of the House of Commons without the name of a parliamentary agent attached to it, who will be responsible for its accuracy."

13. "The sanction of the chairman of ways and means, in writing, is required to every notice of a motion prepared by a parliamentary agent, for dispensing with any Sessional or Standing Order of the house."

Registry of agents.

The name, description, and place of residence of the parliamentary agent in town, and of the agent in the country (if any), soliciting a bill, are entered in the "private bill register," in the private bill office, which is open to public inspection.

Members may not be agents.

Besides these regulations, there are certain disqualifications for parliamentary agency. It was declared by a resolution of the house, 26th February 1830, *nem. con.*,

"That it is contrary to the law and usage of Parliament, that any member of this house should be permitted to engage, either by himself or any partner, in the management of private bills, before this or the other house of Parliament, for pecuniary reward."[1]

Nor officers of the house.

And in compliance with the recommendation of a select committee on the House of Commons offices in 1835, no officer or clerk belonging to the establishment is allowed to transact private business before the house, for his emolument or advantage, either directly or indirectly.[2]

Notices of private business, how given.

II. It has been stated elsewhere, that the public business for each day is set down in the order book, either as notices of motions, or orders of the day: but the notices in relation to private business are not given by a member, nor entered in the order book, except in the case of any special proceedings: but are required to be delivered at the private bill

[1] 85 Com. J. 107.

[2] Parl. Rep. No. 648, of 1833, p. 9; No. 606, of 1835, pp. 17. 19.

office, at specified times, by the agents soliciting the bills. These notices will each be described in their proper places: but one rule applies to all of them alike:—they must be delivered before six o'clock in the evening of any day on which the house shall sit; and before two o'clock on any day on which the house shall not sit; and after any day on which the house has adjourned beyond the following day, no notice may be given for the first day on which it shall sit again. If any stage of a bill be proceeded with when the notice has not been duly given, or the proper interval allowed, or if notice be taken of any other informality, such proceeding will be null and void, and the stage must be repeated.[1]

Hours for giving notices.

If not duly given, proceedings void.

All notices are open to inspection in the private bill office: but for the sake of greater publicity and convenience, they are also printed with the Votes; and members and parties interested are thus as well acquainted with the private business set down for each sitting, as with the public notices and orders of the day.

Notices published.

III. The time set apart for the consideration of all matters relating to private bills, is between four and five in the afternoon, immediately after the meeting of the house; or at twelve on Wednesday, and at the commencement of other morning sittings; when the orders of the day and notices of motions are proceeded with, in the order in which they appear in the printed "private business list;" and provisional order bills are placed after the private business.

Time for private business.

But to entitle a motion to be heard at the time of private business, it must relate to a private bill before the house, or strictly to private business in some other form. On the 3rd April 1845, a member having given notice that he should, at the time of private business, make a motion for referring back a report, to the Board of Trade, for re-consideration; and having risen in his place for that purpose, was inter-

What to be deemed private business.

[1] 100 Com. J. 423; 101 Ib. 167; 106 Ib. 75; 107 Ib. 157; 122 Ib. 66.

rupted by Mr. Speaker, who stated that, in his opinion, that motion ought not to be considered as private business, and ought not to be brought forward at that time: but, as this was a new case, he submitted it to the decision of the house. Whereupon a motion was made, and question put, "That the member be now heard in support of the motion intended to be made by him, and that the question be proposed to the house;" which the house decided in the negative. In this case the petition for the bill had been referred to the committee on petitions for private bills, but there was, in fact, no bill before the house. It was upon this ground that the motion was ruled not to relate to private business, in such a way as to entitle it to be brought on at that time. If the same motion had been offered after the commitment of the bill, when the house would have referred the report of the railway department to the committee, it would have been received as a question relating to a private bill then in progress, and would have been properly brought on at the time of private business.[1] Resolutions for the amendment of the Standing Orders, and adjourned debates upon them, are always taken at this time. Sometimes particular matters are ordered to be taken into consideration at the time of private business.[2]

Order of proceedings on private business.

As soon as the house is ready to proceed to private business, the Speaker desires the clerk at the table to read from the private business list, the titles of the several bills set down for the day, which are read in the following order: 1. Consideration of Lords' amendments; 2. Third readings; 3. Consideration of bills ordered to lie upon the table; 4. Second readings; and 5. First readings. If, upon the reading of any title, no motion be made relative to the bill, or if the motion be opposed,[3] further proceedings are adjourned until the next sitting of the house.

Conduct of bills by members.

Every form and proceeding, in the offices of the house,

[1] 100 Com. J. 191; 79 Hans. Deb. 3rd Ser. 10; Bourke's Decisions, 290.

[2] 109 Com. J. 396, &c.

[3] See *infra*, p. 800.

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connected with the progress of a bill, is managed by a parliamentary agent (or by a solicitor who has entered his name as agent for the bill), or by officers of the house: but, in the house itself, no order can be obtained, except by a motion made by a member, and a question proposed and put in the usual manner, from the chair. Two members are generally requested by their constituents, or by the parties, to undertake the charge of a bill:[1] they receive notice from the agents when they will be required to make particular motions, of which the forms are prepared for them; and they attend in their places, at the proper time, for that purpose. In ordinary cases, the different proceedings being prescribed by the Standing Orders, the motion made is a mere form, preliminary to the usual order of the house; and, except in opposed cases, is generally made for all the bills in the list, by one member who, to the great convenience of the house and of the parties, undertakes this useful office.[2] But whenever any unusual proceeding becomes necessary, such as a special reference to the examiner, or a committee, or a departure from the Standing Orders or rules of the house, the member is required, except in urgent cases, to give notice of his intended motion; and afterwards to make the motion in the usual manner.

When special motions made.

IV. Every vote of the house upon a private bill is entered in the Votes and Journals; and there are also kept in the private bill office, registers, in which are recorded all the proceedings, from the petition to the passing of the bill, which are open to public inspection daily. The entries in these registers specify briefly each day's proceedings before the examiners, or in the house, or in any committee to which the bill may be referred. As every proceeding is entered under

"Private bill registers."

[1] The names of the members who are ordered to prepare and bring in the bill, are printed on the back of it.

[2] For several years, this duty has been most efficiently discharged by Sir Charles Forster, M.P. for Walsall, and chairman of the committee on public petitions.

the name of the particular bill to which it refers, it can be immediately referred to, and the exact state of the bill discovered at a glance.

After these explanations, the proceedings in the house may be described, without interruption, precisely in the order in which they usually occur.

Petition for bill presented.

When the petition for the bill has been indorsed by one of the examiners, it must be presented to the house, by a member, with a printed copy of the bill annexed, not later than three clear days after such indorsement; or, if, when so indorsed, the house should not be sitting, then not later than three clear days after the first sitting; and in case the house should not sit on the latest day allowed for the presentation of the petition, it is to be presented on the first day on which the house shall again sit. If the petition for the bill relate to any claim upon the Crown, the Queen's recommendation must be signified; and the petition will be referred to a committee of the whole house.[1]

When standing orders not complied with.

If the Standing Orders have been complied with, the bill is at once ordered to be brought in. If not complied with, the petition is referred to the Standing Orders committee; and the report of the examiner, having been laid upon the table by the Speaker, is also referred.

Petitions withdrawn and other petitions presented.

On the 7th March 1845, the South Eastern Railway Company petitioned for leave to withdraw their original petition for a bill, and to present petitions for seven separate bills with reference to the objects comprised in their original petition. Their petition was referred to the Standing Orders committee, who reported, on the 11th March, that if the house shall give leave to withdraw their original petition, the sessional order ought to be dispensed with, and that the parties be permitted to present petitions for seven separate bills. On the 14th March, the original petition was withdrawn, and leave given to present petitions for seven separate

[1] Earl of Perth and Melfort's Compensation Bill, 1856; 111 Com. J. 247, &c.

bills.[1] In the same manner, leave was given, on the 14th March 1845, that two London and Croydon Railway bill petitions be withdrawn, and that petitions might be presented for five different bills.[2]

Private bills to be brought in upon petition.

There is an express Standing Order, that no private bill shall be brought in otherwise than upon petition, signed by the parties, or some of them, who are suitors for the bill; and bills which have been proceeding as public bills, have sometimes been withdrawn on notice being taken that they were private bills, and ought to have been brought in upon petition.[3] But bills of a local character, to which the Standing Orders of the house are applicable, are occasionally brought in, by order, as public bills, without the form of a petition. Their further progress, however, is subject to the proof of compliance with the Standing Orders before the examiner. They are also liable to the payment of fees: but in the greater number of cases, the objects are so far of a public nature that the fees are remitted. They are generally bills for carrying out national works, or relating to Crown property, or other public objects in which the government are concerned; and are familiarly known as "hybrid bills."[4]

Exceptions.

Hybrid bills.

Provisional order bills.

Where provisional orders, confirmed by Parliament, have taken the place of private acts,[5] the bills for confirming such orders are introduced as public bills, subject to the proof of certain deposits, before the examiner. Such bills, after the second reading, stand referred to the committee of selection or the general committee on railway and canal bills, by

[1] 100 Com. J. 136.

[2] Ib. 138.

[3] 80 Ib. 488. 490, 491.

[4] Knightsbridge and Kensington Openings Bill, 1842; Holyhead Harbour Bill, 1847; Caledonian Canal Bill; Windsor Castle Approaches Bill, 1848; Dublin Improvement (No. 2) Bill, 1849; Portland Harbour and Breakwater Bill, 1850; Smithfield Market Removal Bill, 1851; Metropolis Water Supply Bills, 1851 and 1852; Belfast Municipal Boundaries Bill, 1853; Public Offices Extension Bill, 1857; Thames Embankment Bills, 1862 and 1863; Metropolis Gas Bills, 1867 and 1868; Admiralty and War Offices Rebuilding Bill, 1873; Parochial Charities (London) Bill; Public Offices Site Bill, 1882, &c.

[5] See *supra*, p. 760.

whom committees are appointed, as in the case of private bills. By Standing Order 225A :—

"All bills for confirming provisional orders or certificates shall be set down for consideration, each day, in a separate list, after the private business, and arranged in the same order as that prescribed by the Standing Orders for private bills."

If any petition be presented to either house against a provisional order, in the progress of the bill, such petition is referred to the committee on the bill; and the petitioners are allowed to appear and oppose, as in the case of private bills. The committee to whom any opposed order is referred, is to consider also all the orders comprised in the bill. The promoters are not liable to the payment of fees.

Commons inclosure.

In regard to provisional orders under the Commons Inclosure Act, 1876, a committee is appointed every session, six members being nominated by the house, and five by the committee of selection, to consider every report made by the Inclosure Commissioners certifying the expediency of any provisional order for the inclosure or regulation of a common, and presented to the house during the present session, before a bill is brought in for the confirmation of such order.[1]

When provisional orders are amended.

Some difficulties were experienced by committees on such bills where it became necessary to amend the provisional orders, inasmuch as those orders were no longer the documents issued by the department, under the authority of the general acts: but since 1865, a simple expedient has been adopted. The preamble recites that a provisional order has been made by the Board of Trade or other department, and amended by Parliament, and is, as so amended, set out in the schedule to the bill; and in the schedule appears the amended order referred to and confirmed by the bill, comprising every amendment introduced by the committee.[2]

Petitions for additional provision.

If, after the introduction of a private bill, any additional

[1] 132 Com. J. 66, &c.

[2] Tyne Pilotage Act, 28 & 29 Vict. c. 44; Pier and Harbour Orders Confirmation Acts, 28 & 29 Vict. c. 58. 76. 114, &c.

provision should be desired to be made in the bill, in respect of matters to which the Standing Orders are applicable, a petition for that purpose should be presented to the house, with a printed copy of the proposed clauses annexed. The petition will be referred to the examiners of petitions for private bills, who are to give at least two clear days' notice of the day on which it will be examined. Memorials complaining of non-compliance with the Standing Orders, in respect of the petition, may be deposited in the Private Bill Office, together with two copies thereof, before twelve o'clock on the day preceding that appointed for the examination of the petition; and the examiner may entertain any memorial, although the party (if any) who may be specially affected by the non-compliance shall not have signed it. After hearing the parties, in the same manner as in the case of the original petition for the bill, the examiner reports to the house whether the Standing Orders have been complied with or not, or whether any be applicable to the petition for additional provision.

When such petitions considered in committee of the whole house.

It has occasionally happened that petitions for additional provision have sought for public legislation affecting the stamp duties or other branches of the revenue; which, according to the rules of the house, are required to originate in a committee of the whole house.[1] In such cases the petition is presented, and the Queen's recommendation having been signified, the house resolves to go into committee on a future day, to consider the matter of such petition. The matter is considered in committee on that day; and when the resolution is reported and agreed to, an instruction is given to the committee on the bill to make provision accordingly.[2] Such

[1] See *supra*, p. 652.

[2] National Loan Fund Life Assurance Society Bill, 1855; 110 Com. J. 217. Globe Insurance Company Bill, 1858; 113 Ib. 169. Law Life Assurance Society Bill, 25th June 1863. Land Securities Company Bill, 10th March 1864. Dundalk and Greenore Railway (cancellation of bond), 15th May 1873. Rhonda Valley and Hirwain Junction Railway (cancellation of bond), 1878. East London Railway (Repayment of Deposit), 1882, &c.

committees are now taken at the time of private business. If any such provision be included in the original bill, it must be printed in *italics;* and before the sitting of the committee, similar proceedings will be taken in the house.

Land revenues of the Crown.

In the Birkenhead Docks Bill, 1850, an arrangement having been made with the commissioners of woods and forests, for a payment out of the land revenues of the Crown, a resolution was agreed to, in the proper form, and the bill re-committed to a committee of the whole house, with an instruction to make provision.[1] In the case of the Forest of Dean Central Railway Bill, 1856, after the bill had been reported from the committee, a resolution was agreed to for an advance to the company out of the land revenues of the Crown; the bill was re-committed to a committee of the whole house, and an instruction given to make provision accordingly.[2]

Standing Orders Committee.

The committee on Standing Orders consists of eleven members, nominated at the commencement of every session, of whom five are a quorum. To this committee are referred all the reports of the examiners, in which they report that the Standing Orders have not been complied with, whether the bills originate in the Lords or in the Commons; and it is their office to determine and report to the house whether such Standing Orders ought or ought not to be dispensed with; and whether, in their opinion, the parties should be permitted to proceed with their bill, or any portion of it; and under what conditions (if any); as, for example, after publishing advertisements, depositing plans, or amending estimates, when such conditions seem to be proper.

When special report of examiner referred.

If any special report be made by the examiner, as to the construction of a Standing Order, it will also be referred to the Standing Orders Committee. The committee, in such a case, are to determine, according to their construction of the Standing Order, and on the facts stated in the examiner's report, whether the Standing Orders have been complied with

[1] 105 Com. J. 369. 423. [2] 111 Ib. 266.

or not. If they determine that the Standing Orders have been complied with, they so report to the house; and if not complied with, they proceed to consider whether the Standing Orders ought to be dispensed with. To this committee also stand referred all petitions which have been deposited in the Private Bill Office, praying that any of the sessional or Standing Orders of the house may be dispensed with; or that petitions for private bills which have been struck off the general list by the examiners, may be re-inserted, and all petitions opposing the same; and they report their opinion upon such petitions to the house. Their duties, in reference to clauses and amendments and other matters, will be adverted to, in describing the proceedings to which they relate.

Other duties of Standing Orders Committee.

According to the usual practice of this committee, written statements are prepared, on one side by the agent for the bill, and on the other by the agents for memorialists who have been heard by the examiner. When these statements have been read by the committee, they determine whether the Standing Orders ought or ought not to be dispensed with, and whether "the parties should be permitted to proceed with their bill, and under what (if any) conditions." The parties are called in and acquainted with the determination of the committee, which is afterwards reported to the house. It is not usual to hear the parties, except for the explanation of any circumstances which are not sufficiently shown by the written statements. But in some inquiries of a special character which have been referred to the committee, they have heard agents and examined witnesses,[1] before they have agreed to their report.

Proceedings of Standing Orders Committee.

The committee, in their report to the house, do not explain the grounds of their determination: but the principles and general rules by which they are guided, may be briefly stated. The report of the examiner being conclusive as to

Principles by which Standing Orders Committee is governed.

[1] Edinburgh and Perth Railway Bill, 1847; 102 Com. J. 226. 293; and evidence printed at the expense of the parties. Edinburgh and Northern Railway Bill, 1849; 104 Ib. 37. 48. 70.

the facts, it is the province of the committee to consider equitably, with reference to public interests and private rights, whether the bill should be permitted to proceed. If the promoters appear to have attempted any fraud upon the house, or to be chargeable with gross or wilful negligence, they will have forfeited all claim to a favourable consideration. But assuming them to have taken reasonable care in endeavouring to comply with the orders of the house, and that their errors have been the result of accident or inadvertence, not amounting to *laches*, their case will be considered according to its particular circumstances. The committee will then estimate the importance of the orders which have been violated, the character and number of separate instances of non-compliance, the extent to which public and private interests may be affected by such non-compliance, the importance and pressing nature of the bill itself, the absence of opposition, or other special circumstances. And, according to the general view which the committee may take of the whole of the circumstances, they will report that the Standing Orders ought, or ought not, to be dispensed with.

Report. Leave to proceed.

If the Standing Orders Committee report that indulgence should be granted to the promoters of a bill, they are allowed to proceed with the bill or with the additional provision, either at once, or after complying with the necessary conditions, according to the report of the committee. To give effect to this permission, the proper form to be observed, is for a member to move that the report be read, and that leave be given to bring in the bill. In the case of a petition for additional provision, no further proceeding in the house is necessary: but the parties have leave to introduce the provision if the committee shall think fit. In 1853, the Standing Orders Committee had reported that the parties should have leave to make provision in the Lands Improvement Bill, pursuant to their petition. In the meantime the amendments proposed to be made in other parts of the bill had become so numerous, that the chairman of ways and

means required the promoters to withdraw it, and bring in another. On bill (No. 2) being ordered, the resolution of the house on the report of the Standing Orders Committee was read, and the gentlemen ordered to bring in the bill were instructed to make provision pursuant to the petition.[1] A second reference to the Standing Orders Committee was thus avoided. The compliance with orders for giving notices, depositing amended plans, &c. is, in ordinary cases, required to be proved before the committee on the bill, but, in special cases, before the examiners.[2]

Standing Orders not to be dispensed with.

If the committee report that the Standing Orders ought not to be dispensed with, their decision is generally acquiesced in by the promoters, and is fatal to the bill. But in order to leave the question still open for consideration, the house agree to those resolutions only which are favourable to the progress of bills, and pass no opinion upon the unfavourable reports, which are merely ordered to lie upon the table.

Manchester Ship Canal Bill, 1883.

In 1883, the examiner having reported that in the case of the Manchester Ship Canal Bill the Standing Orders had not been complied with in respect of the proposed dredging of the channel of the river Mersey, the Standing Orders Committee resolved, that the promoters should be allowed to proceed with their bill on striking out all the powers relating to that portion of the works;[3] and in the Lords the Standing Orders Committee arrived at the same conclusion.[4]

Decision of Standing Orders Committee overruled.

In some few cases the decision of the Standing Orders Committee has been excepted to, and overruled by the house, either upon the consideration of petitions from the promoters,[5] or by a direct motion in the house, not founded upon any

[1] 108 Com. J. 406.

[2] Dublin Improvement Bill, 1849; 104 Com. J. 76. Great Northern Railway Bill, 1849; Ib. 81, &c.

[3] 138 Com. J. 20. 61.

[4] Lords' Minutes, 13th April 1883.

[5] Doncaster and Selby Road Bill, 1832; 87 Com. J. 150. 163. London Bridge Approaches Bill, 1834; 89 Ib. 81. 122. London City Police Bill, 1839; 94 Ib. 228. 234. London and Greenwich Railway Enlargement and Station Bill, 1840; 95 Ib. 113. 118. Great Northern Railway, &c. Bill, 1862; 117 Ib. 307.

petition.[1] But as the house has generally been disposed to support the committee, attempts to reverse or disturb its decisions have rarely been successful.[2]

Report referred back to the committee.

In one case[3] the committee had decided that the Standing Orders ought *not* to be dispensed with: but by a clerical error it was reported that the Standing Orders ought to be dispensed with, and a bill was ordered to be brought in. The report was referred back to the committee, and the subsequent proceedings declared null and void. The committee again decided that the Standing Orders ought not to be dispensed with, and so reported to the house: but the promoters subsequently presented a petition for leave to present a petition for a bill, and their second bill ultimately received the royal assent. In another case, notice being taken that a report of the committee was incorrect, it was referred back to the committee.[4]

In the case of the Albert Station and Mid-London Railway Bill, in 1863, the resolution of the committee was recommitted; and a petition referred to the committee, with an instruction to inquire and report whether the special circumstances stated were such as to render it just and expedient that the Standing Orders should be dispensed with: but the committee, after investigation, repeated their resolution that the orders ought not to be dispensed with.[5] In 1870, certain resolutions of the committee, with the bills and the reports of the examiners, were referred back to the committee, and petitions were referred to them, with an instruction to report

[1] Irish Great Western Railway Bill, 5th May 1845; 100 Com. J. 395; 80 Hans. Deb. 3rd Ser. 158. 175. Sunderland Dock (No. 2) Bill, 1858; 113 Com. J. 230. Charing Cross Railway Bill, 1862; 117 Ib. 273. London, Chatham, and Dover Railway Bills (2), (3), and (4), 1867; Great Eastern Railway (Finance) Bill, 1867; 122 Ib. 162. 167. 204. 230, &c.

[2] Birkenhead, Manchester, and Cheshire Junction Railway Bill, 25th April 1845; 100 Ib. 338. Shrewsbury and Hereford Railway Bill, 1846; 101 Ib. 486. 502.

[3] West Riding Union Railway, 1846; 101 Ib. 176. 223. 252.

[4] Liverpool Tramways Bill, 1867; 122 Ib. 66.

[5] Votes, 27th March and 17th April 1863.

whether special circumstances render it expedient that the Standing Orders should be dispensed with. The report was favourable, and the bills were permitted to proceed.[1] In 1883, in the case of the Dundalk Water Bill, the committee having reported that the Standing Orders ought not to be dispensed with, the report was re-committed: but the committee adhered to their previous decision.[2]

Petitions for leave to deposit petitions for bills.

If the promoters of the bill, without desiring to disturb the decision of the Standing Orders Committee, still entertain hopes that the house may be induced to relax the Standing Orders, or be willing to abandon portions of their bill; or if there be special circumstances, such as the consent of all parties, or the urgent necessity of the bill being passed in the present session, they should deposit a petition, praying for leave to deposit a petition for a bill, and stating fully the grounds of their application. The petition will stand referred to the Standing Orders Committee, who, after hearing the statements of the parties, will report to the house whether, in their opinion, the parties should have leave to deposit a petition for a bill.[3] If leave be given, the petition is deposited in the private bill office; when the case is examined, and the petition certified by the examiner, in the same manner as if it had been originally deposited before the 21st December. But in such cases, the Standing Orders previously reported by the examiner not to have been complied with, are taken to have been dispensed with; and unless any further breaches are discovered, he now reports that the Standing Orders have been complied with.

To deposit petitions for bills after time.

If parties desire to solicit a bill during the current session, who have not deposited a petition for the bill before the 21st December, they may deposit a petition, praying for leave to

[1] 125 Com. J. 78.

[2] 138 Ib. 87. 121. 129.

[3] Manchester and Southampton Railway Bill, 1847; 102 Com. J. 269, &c. Belfast and West of Ireland Railway Bill; Bagenalstown and Wexford Railway Bill, 1854. South London Railway (No. 3), 1860; 115 Ib. 94. Hastings Western Water (No. 2), 1861; 116 Ib. 139. Southam Railway (No. 2), 1863.

deposit a petition for a bill, and explaining the circumstances under which they had been prevented from complying with the orders of the house, as to the deposit of their petition at the proper time. Their petition will stand referred to the Standing Orders Committee, and if they succeed in making out a case for indulgence, leave will be given by the house, on the report of the committee, to deposit a petition for a bill, which will be proceeded with in the usual manner.[1]

Bill presented.

When leave has been obtained to bring in a private bill, it is required to be presented, by being deposited in the private bill office, not later than one clear day after the presentation of the petition; or where the petition has been referred to the Standing Orders Committee, then not later than one clear day after the house has given the parties leave to proceed. It must be printed on paper of a folio size (as determined by the Speaker), with a cover of parchment attached to it, upon which the title is written: and the short title of the bill, as first entered in the Votes, is to correspond with that at the head of the advertisement. The names of the members ordered to prepare and bring in the bill are printed on the back; and the agent must take care to have the express authority of the members, for such use of their names: for in case of any irregularity in this respect, the bill will be ordered to be withdrawn.[2]

Schedules added.

On the 20th February 1846, the solicitor and agent for a bill petitioned for leave to add schedules which had been accidentally omitted from the printed copies of the bill, and the house allowed the parties to make the alteration.[3]

Rates and tolls in *italics*.

The proposed amount of all rates, tolls, fines, forfeitures, or penalties, or other matters which must be settled in com-

[1] Ratcliff Gas Company, 1854; 109 Com. J. 340. Scinde Railway Bill, 1857; 112 Ib. 295. Bahia and San Francisco Railway, 1860; 115 Ib. 244. Charing Cross Railway, 1862; 117 Ib. 283. Albert Park (Dublin), 1863; 121 Ib. 218; 122 Ib. 171.

[2] Great Dover Road Bill, 11th March 1861; 116 Com. J. 99; 161 Hans. Deb. 3rd Ser. 1715.

[3] Southport Improvement Bill, 20th and 23rd February 1846; 101 Ib. 183. 185.

mittee, are ordered to be inserted in *italics*, in the printed bill. These were formerly left as blanks, and are still technically regarded by the house as blanks to be filled up by the committee on the bill: but it is more convenient that the particular amounts intended to be proposed, should be known at the same time as the other provisions of the bill.

First reading.

Copies of bill delivered to doorkeepers.

The several bills, after they have been presented in the Private Bill Office, are laid upon the table of the house for the first reading, together with a list of such bills, and are read the first time in the order in which they stand in the list for each day: but before the first reading of every private bill (except name bills), printed copies of the bill must be delivered to the doorkeepers in the lobby of the house, for the use of members.

Consent of proprietors to be proved.

After the first reading of a bill conferring additional powers on the promoters, being a company already constituted by act, compliance with Standing Orders, Nos. 62 and 63, concerning the consent of proprietors, is to be proved before the examiner.

Provisional order bills.

Bills for confirming provisional orders or certificates, being brought in as public bills, are, after the first reading, referred to the examiners, and are not further proceeded with until after their report.

Hybrid bills.

But in the case of "hybrid" bills, by Standing Order of the 19th February 1883, the examiner is directed to examine the bills with respect to compliance with the Standing Orders, and the order of the day for the second reading continues upon the order book, and is not discharged unless the Standing Orders have not been complied with, and the Standing Orders Committee refuse to dispense with them.[1]

Proceedings before second reading.

Between the first and second reading there may not be less than three clear days nor more than seven, unless the bill has been referred to the examiners; in which case it may not be read a second time later than seven clear days after the report

[1] 138 Com. J. 19.

of the examiner, or of the Standing Orders Committee. The agent for the bill is required to give three clear days' notice in writing, at the Private Bill Office, of the day proposed for the second reading, and no such notice may be given until the day after that on which the bill has been ordered to be read a second time; and should it be afterwards discovered that such notice had not been duly given, the proceedings upon the second reading will be declared null and void.[1]

Bill examined in private bill office.

Withdrawn if informal.

Meanwhile the bill is in the custody of the Private Bill Office, where it is examined, as to its conformity with the rules and Standing Orders of the house. If the bill be improperly drawn, or at variance with the Standing Orders, or the order of leave, the order for the second reading is discharged, the bill is withdrawn, and leave is given to present another.[2] The bill so presented is distinguished from the first bill by being numbered (2), and, having been read a first time, is referred to the examiners of petitions for private bills. Two clear days' notice is given of the examination, and memorials may be deposited before twelve o'clock on the day preceding that appointed. The examiner inquires whether the Standing Orders, which have been already proved in respect of the first bill, have equally been complied with in respect of the bill No. 2, and reports accordingly to the house; when the bill proceeds in the ordinary course.

Peers' names.

The House of Commons will not allow peers to be concerned in the levy of any charge upon the people: but the relaxation of its privileges, in regard to tolls and charges for services performed, not being in the nature of a tax, has led to a considerable change in recent practice.

"The clerks in the Private Bill Office are particularly directed to take care, that in the examination of all private bills levying any rates, tolls, or duties on the subject, peers of Parliament, peers of Scotland, or peers of Ireland, are not to be inserted therein, either as trustees, commissioners, or directors of any company, except where such rates,

[1] North Union Railway Bill, 1846; 101 Com. J. 371.

[2] 92 Com. J. 254. 425; 99 Ib. 187. 211; 104 Ib. 71; 105 Ib. 40; 106 Ib. 209; 108 Ib. 289, &c.

tolls, or duties are made or imposed for services performed, and are not in the nature of a tax."[1]

If a violation of the Standing Orders.

In 1845, Mr. Speaker called the attention of the house to a bill which contained a clause giving compulsory power to take lands, of which no notice had been given, and without the proper plans, sections, and estimates having been deposited according to the Standing Orders. The order for the second reading was discharged, and the bill referred to the committee on petitions for private bills.[2] The committee reported that the Standing Orders had not been complied with; and were instructed to inquire by whom, and under what circumstances, the violation of the Standing Orders had been committed.[3] Their report was referred to the Standing Orders Committee, who determined that the Standing Orders ought not to be dispensed with; and the bill was not proceeded with.[4]

Second reading.

The second reading corresponds with the same stage in other bills, and in agreeing to it, the house affirms the general principle, or expediency, of the measure. There is, however, a distinction between the second reading of a public and of a private bill, which should not be overlooked. A public bill being founded on reasons of state policy, the house, in agreeing to its second reading, accepts and affirms those reasons: but the expediency of a private bill, being mainly founded upon allegations of fact, which have not yet been proved, the house, in agreeing to its second reading, affirms the principle of the bill, conditionally, and subject to the proof of such allegations, before the committee. Where, irrespective of such facts, the principle is objectionable, the house will not consent to the second reading: but otherwise, the expediency of the measure is usually left for the consideration of the committee.[5] This is the first occasion

[1] By Speaker's Order, 15th Feb. 1859.

[2] Midland Railway Branches Bill, 1845; 100 Com. J. 219.

[3] Ib. 247.

[4] Ib. 262. 385. 419.

[5] But see Minutes of Committee on Mersey Conservancy Bill, 1857; and 147 Hans. Deb. 3rd Ser. 133.

on which the bill is brought before the house otherwise than *pro formâ*, or in connection with the Standing Orders; and if the bill be opposed, upon its principle, it is the proper time for attempting its defeat. If the second reading be deferred for three or six months, or if the bill be rejected, no new bill for the same object can be offered until the next session.[1] In order to avert surprises, if the second or third reading of a bill, or the consideration of a bill as amended, or any proposed clause or amendment be opposed, its consideration is postponed until the next day's sitting, unless any member, on behalf of, or in concert with, the promoters, moves its postponement until a more distant day.[2]

Postponed, if opposed.

On the 23rd June 1857, on the second reading of the Finsbury Park Bill, a false issue, as it were, was raised. The bill was for making a park out of rates upon the metropolis: but an intimation was given that the government had favourably entertained an application for a contribution of 50,000*l.* from the consolidated fund, to which great objection was raised in debate. Lest the bill should be lost, on this ground, though it contained no provision for that purpose, it was suggested that a member should move the adjournment of the debate, and that all who objected to the public grant should vote for that motion, and thus give the promoters an opportunity of determining whether they would proceed with their bill. The adjournment was accordingly moved, and carried upon a division.[3]

Government contracts.

By a Standing Order of the 13th July 1869, where a postal or telegraphic contract with Government requires to be confirmed by Act of Parliament, the bill for that purpose should not be introduced and dealt with as a private bill, and power to the Government to enter into agreements, by which obligations at the public charge shall be undertaken, should not be given in any private act.

[1] See *supra*, p. 335.

[2] See Deb. on London, Chatham, and Dover Railway Bill, 6th July 1863.

[3] 146 Hans. Deb. 3rd Ser. 236.

When a private bill has been read a second time, and committed, it stands referred, if not a railway, canal, or divorce bill, to the "committee of selection;" if a railway or canal bill, to the general committee on railway and canal bills; and if a divorce bill, to the select committee on divorce bills. On the 22nd June 1863, after the London (City) Traffic Regulation Bill had been so committed, a motion was made to suspend the Standing Order, and to commit the bill to a committee of fifteen, ten to be nominated by the house, and five by the committee of selection: but it was not agreed to by the house. When a bill has been read a second time, by mistake, the order that the bill be now read a second time has been discharged, on a later day, and another day appointed for the second reading.[1] Commitment. Bills committed by mistake.

After a bill has been read a second time, an instruction may be given to the committee for its direction, if the house think fit. On the 15th April 1872, an instruction was moved to the committee on the Metage of Grain (Port of London) Bill, to provide for the abolition of compulsory metage, and of any tax or charge upon grain imported into London. Exception was taken to an instruction which imposed an absolute condition upon the decision of the committee. The Speaker, however, stated that such an instruction was unusual, but was quite within the competence of the house; and the motion for the instruction was agreed to.[2] On the 24th April 1883, an instruction was given to the committee on the Metropolitan District Railway Bill that they have power to insert a clause for pulling down certain ventilators sanctioned by an act of a previous session.[3] Instructions.

On the 7th May 1883, the committee on the Manchester Ship Canal were empowered, by instruction, to inquire into a portion of the proposed works, which had been omitted from the bill, on account of non-compliance with the Standing Orders.

[1] 127 Com. J. 135.
[2] 210 Hans. Deb. 3rd Ser. 1260.
[3] Votes, p. 334; Hans. Deb. 24th April.

Committee of selection.

Until 1883, the committee of selection consisted of the chairman of the Standing Orders Committee, who is, *ex officio*, chairman, and of five other members nominated by the house at the commencement of every session, of whom three are a quorum. But as the nomination of standing committees on trade and law and courts of justice was confided to this committee in 1883, the number was enlarged by the addition of two other members.[1] This committee classifies all private bills not being railway, tramway or canal bills, nominates the chairman and members of committees on such bills, and arranges the time of their sitting, and the bills to be considered by them.

Its proceedings and duties.

General committee on railway and canal bills.

The general committee on railway and canal bills generally consists of about eight members (of whom three are a quorum), to be nominated at the commencement of the session by the committee of selection. The committee of selection may, from time to time, discharge members from attendance on the general committee, and is to appoint the chairman. As regards railway, tramway and canal bills, this committee has functions similar to those of the committee of selection. It forms such bills into groups, and appoints the chairman of every committee from its own body,—being in fact a chairman's panel; and may change the chairman from time to time. The main object of its constitution is to ensure a communication between the several chairmen, and uniformity in the decisions of the committees.

The several duties of these two committees are distinctly prescribed in the Standing Orders, and a general outline of their proceedings is all that need be given in order to explain the progress of a private bill. Printed copies of all private bills, not being railway, tramway or canal bills, are laid by the promoters before the committee of selection, and of railway, tramway and canal bills before the general committee at the first meeting of such committees respectively; and each committee forms into groups such bills as may be con-

[1] 27th February, 138 Com. J. 52.

veniently submitted to the same committee; and names the bill or bills which shall be taken into consideration on the first day of the meeting of the committee.

Constitution of committees on private bills.

The committee on every opposed railway, tramway and canal bill, or group of such bills, consists of four members and a referee,[1] or four[2] members not locally or otherwise interested in the bill or bills in progress, the chairman being appointed by the general committee, and the other three members by the committee of selection. Committees on other opposed private bills consist of a chairman, three members, and a referee, or a chairman and three members, not locally or otherwise interested, appointed by the committee of selection.

Unopposed bills.

Every unopposed private bill, not being a road bill, is referred, by the committee of selection, to the chairman of the committee of ways and means, and one of the members who had been ordered to prepare and bring in the bill, and one other member not locally or otherwise interested, or a referee.[3]

Road bills.

All road bills, whether opposed or unopposed, are referred to a committee consisting of a chairman and three other members not locally or otherwise interested. The general committee on railway and canal bills may, whenever they think fit, refer an unopposed railway, tramway or canal bill to the chairman of ways and means, and two other members not locally or otherwise interested, or one member and a referee to be nominated by the committee of selection.

When considered as opposed.

No bill is considered as an opposed bill unless, not later than ten clear days after the first reading, a petition has been presented against it, in which the petitioners pray to be heard by themselves, their counsel, or agents, or unless the chairman of ways and means reports to the house that any bill ought to be so treated.

Notice given to selected members.

The committee of selection give each member at least seven days' notice, by publication in the Votes, or otherwise, of the

[1] By order, 19th March 1868; S. O. No. 137.

[2] Reduced from five, in 1864.

[3] For bills originating in the Lords, see *infra*, p. 877; and S. O. No. 109.

week in which he is to be in attendance to serve, if required, as a member not locally or otherwise interested; and they also give him sufficient notice of his appointment as the member of a committee, and transmit to him a blank form of declaration, which he is to return forthwith, properly filled up and signed. If he neglect to return the declaration in due time, or do not send a sufficient excuse, the committee of selection will report his name to the house, and he will be ordered to attend the committee on the bill:[1] or to attend the house in his place, where, on offering sufficient excuses for his neglect, he will be ordered to attend the committee.[2]

Members refusing to attend.

If the committee of selection be dissatisfied with his excuse, they will require him to serve upon a committee; when his attendance will become obligatory, and if necessary will be enforced by the house. On the 5th May 1845, a member was reported absent from a group committee. He stated to the house that a correspondence had taken place between the committee of selection and himself, in which he had informed them that he was already serving on two public committees, and that his serving on the railway group committee was incompatible with those duties. But the house ordered him to attend the railway committee.[3] In 1846, the committee of selection, not being satisfied with the excuses of Mr. Smith O'Brien, nominated him a member of a committee on a group of railway bills. He was reported absent from that committee, and was ordered by the house to attend it on the following day. He adhered, however, to his determination not to attend the committee, and was committed to the custody of the serjeant-at-arms for his contempt.[4]

Case of Mr. Smith O'Brien.

One member substituted for another.

The committee of selection have the power of discharging any member or members of a committee, and substituting

[1] 103 Com. J. 590. 627; 115 Ib. 138. Sir E. Filmer, 1862; 117 Ib. 91; 120 Ib. 369 (no order made).

[2] Mr. Pope Hennessy, 1860; 115 Com. J. 94. 99. 106.

[3] 100 Com. J. 399; 80 Hans. Deb. 3rd Ser. 166.

[4] See *supra*, p. 233. Special Rep. of committee of selection, 24th April 1846; 101 Com. J. 566. 582. 603; 85 Hans. Deb. 3rd Ser. 1071. 1152. 1292. 1300. 1351; 86 Ib. 966. 1198.

other members.[1] On the 4th May 1869, two members were added by the house to the committee on a group of private bills: but without the power of voting.[2]

Members added by the house.

An interval of six days is required to elapse between the second reading of every private bill and the first sitting of the committee, except in the case of name bills, naturalization bills, and estate bills (not relating to Crown, church, or corporation property, &c.), when there are to be three clear days between the second reading and the committee. Subject to this general order, the committee of selection fix the time for holding the first sitting of the committee on every private bill; and the general committee fix the first sitting of the committee on every railway, tramway and canal bill. In the execution of their various duties, the committee of selection have power to send for persons, papers, and records.

Interval between second reading and committee.

First sitting of committee fixed.

In all these matters the committee of selection ordinarily proceed in compliance with the Standing Orders: but where any departure from the Standing Orders, or the usual practice of the committee, is deemed advisable; or, where, for any other reason, a particular mode of dealing with any bills is desired by the house, special instructions have been given to the committee of selection. For example, the house have instructed the committee of selection to refer two or more bills to the same committee;[3] or to form all the bills of a certain class into one group;[4] or to refer a bill to another committee;[5] or to remove a bill from a group, and refer it to a separate committee;[6] or to withdraw a bill from one group and place it in another;[7] or to refer private bills to a group of railway bills;[8] or to refer a bill to the chairman of the committee on Standing Orders, and two other members.[9] Private bills

Instructions to committee of selection.

[1] Until 1858, this power was exercised by the house itself, after the first meeting of the committee.

[2] 124 Com. J. 177.

[3] 100 Ib. 95. 224; 101 Ib. 460; 106 Ib. 280; 124 Ib. 48. 63.

[4] 104 Ib. 248.

[5] 100 Ib. 607.

[6] 105 Ib. 351.

[7] Ib. 418.

[8] Thames Embankment Bill, and Thames Embankment (Chelsea) Bill, 1868.

[9] Rock Life Assurance Company Bill, 1869.

connected with government works, Crown property, or other public interests, are generally referred to a select committee nominated partly by the house, and partly by the committee of selection:[1] and occasionally public bills have been committed to a select committee to be nominated by the committee of selection.[2] Sometimes private bills affecting the metropolis, or other important localities, have been referred to committees exceptionally constituted. Thus, in 1868, all bills relating to gas companies in the metropolis were referred to a select committee of five members: and the committee of selection was afterwards ordered to nominate five members to serve upon the committee.[3] A hybrid bill, the Metropolis Gas Bill, was re-committed to that committee.[4] In 1871, several private bills promoted by the Metropolitan Board of Works, were committed to a select committee of ten members, five to be nominated by the house, and five by the committee of selection.[5] And other bills have been referred to committees of eleven members, six, or seven, to be nominated by the house and five, or four, by the committee of selection; or five by the house and four, or two, by the committee of selection; or three by the house and two by the committee of selection.[6] But in 1872, a motion to commit the Metropolitan Street Improvements Bill to a committee constituted in a similar manner was negatived.[7] And again, in 1873, a like motion was negatived in the case of the Charing Cross and Victoria Embankment Approach Bill.[8] In 1882, a private bill was committed to the

[1] Fisher-lane (Greenwich) Improvement Bill; 100 Com. J. 121. Spitalfields New Street Bill; 101 Ib. 857. Brighton Pavilion Bill, 1849; 104 Ib. 478. Holyhead Harbour Bill, 1850; 105 Ib. 634. Whichwood Forest and Whittlebury Forest Bills, 1853; 108 Ib. 415. 495. Caledonian and Crinan Canals Bill, 1857; 112 Ib. 294; 114 Ib. 265; 115 Ib. 378; 116 Ib. 95; 120 Ib. 99; 121 Ib. 106; 122 Ib. 65; 134 Ib. 202; 135 Ib. 175, &c.

[2] Passing Tolls Bill, 13th Feb. 1857. Metropolis Local Management Bill, 14th June 1860; 115 Com. J. 304.

[3] 123 Ib. 66. 74.

[4] Ib. 126.

[5] 126 Ib. 59. 65. 126.

[6] 130 Ib. 216; 132 Ib. 83; Manchester Corporation Waterworks, 133 Ib. 62; Arklow Harbour Bill and Public Offices Site Bill, 1882; 137 Ib. 121. 241.

[7] 127 Ib. 75.

[8] 128 Ib. 73.

select committee on a public bill; and several private bills for electric lighting were referred to the select committee on the Public Electric Lighting Bill;[1] and all private bills relating to police or sanitary regulations were referred to a committee of seven, appointed by the committee of selection.[2] Committees on bills for confirming provisional orders are ordered to be nominated by the committee of selection, as in the case of a private bill.[3] And instructions have been given to the committee of selection to appoint the first meeting of committees on an earlier day,[4] or forthwith;[5] or not to fix the sitting of committees upon certain classes of bills until a later period;[6] or other special instructions relating to the first meeting of committees.[7]

Certain railway and canal bills referred to a joint committee.

In 1873, pursuant to the recommendation of a joint committee of the previous session, the railway and canal bills containing powers of transfer and amalgamation, were committed to a committee of three members, to be joined by a committee of three lords.[8] In this case the Standing Orders relating to the constitution of committees upon private bills were suspended; and the ordinary rules of *locus standi* were superseded by a general order, referring to the committee all petitions against the bills, which prayed to be heard, up to the date of the order. The Standing Order which gives a second or casting vote was also suspended, in order that the rule of the Lords, "*semper præsumitur pro negante*," might be adopted.

Chairman of ways and means, and counsel.

Before the sitting of the committee on the bill, some important proceedings are necessary to be taken by the promoters. It is the duty of the chairman of ways and means, with the assistance of the counsel to Mr. Speaker, to examine

[1] 137 Com. J. 56, 165.

[2] Ib. 98; 3 Clifford & Rickards, 132.

[3] 121 Ib. 340. 368; 122 Ib. 203.

[4] 100 Ib. 730; 101 Ib. 475; 105 Ib. 145; 107 Ib. 300; 114 Ib. 304; 115 Ib. 427; 120 Ib. 405; 121 Ib. 490; 122 Ib. 427.

[5] 103 Ib. 700; 105 Ib. 513; 107 Ib. 300.

[6] 105 Ib. 72. 84; 106 Ib. 67.

[7] 107 Ib. 279. 300; 108 Ib. 539. 797; 109 Ib. 406; 111 Ib. 256; 113 Ib. 276.

[8] 128 Ib. 179.

all private bills, whether opposed or unopposed, and to call the attention of the house, and also, if he think fit, of the chairman of the committee on every opposed private bill, to all points which may appear to him to require it; and at any period after a bill has been referred to a committee, he is at liberty to report any special circumstances, or to inform the house that any unopposed bill should be treated as an opposed bill. To facilitate this examination, the agent is required to lay copies of the original bill before the chairman and counsel, not later than the day after the examiner has indorsed the petition for the bill;[1] and again, two clear days before the day appointed for the consideration of the bill by a committee, the agent is required to lay before them copies of the bill, as proposed to be submitted to the committee, and signed by the agent. By the practice of the House of Lords, copies of the bill, as originally introduced, and also as proposed to be submitted to the committee on the bill, in the Commons, are laid before the chairman of committees and his counsel; and a simultaneous examination of the bill is consequently proceeding in both houses.

Copies of bill laid before them.

And before chairman of Lords' committees.

Chairman to determine in which house bills are to be first considered.

And by a Standing Order of 1858, the chairman of ways and means is required, at the commencement of each session, to seek a conference with the chairman of committees of the House of Lords, for the purpose of determining in which house the respective private bills should be first considered, and to report such determination to the house.

Amendments before sitting of committee.

Amendments are suggested or required by the authorities in both houses, which are either agreed to at once by the promoters, or after discussion are insisted upon, varied, modified, or dispensed with. In the meantime the promoters endeavour, by proposing amendments of their own, to conciliate parties who are interested, and to avert opposition. They are frequently in communication with public boards or government departments, by whom amendments are also pro-

Supervision by public departments.

[1] Practically, this is done as soon as the bills are deposited in the private bill office.

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posed; and who, again, are in communication with the chairman of ways and means and the chairman of the Lords' committees. The Board of Trade assist in the revision of railway bills, and suggest such amendments as they think necessary for the protection of the public, or for the saving of private rights. The secretary of state for the home department formerly exercised a similar supervision over turnpike road bills: but his functions were transferred, in 1871, to the local government board. Where tidal lands or harbours, docks or navigations are concerned, the Board of Trade, to whom the former admiralty jurisdiction was transferred by the 25 & 26 Vict. c. 69, supervise the provisions of that class of bills. Where there are naval dockyards in any harbours, ports, or estuaries, the admiralty may reserve its jurisdiction, and require protective clauses to be inserted; or may withhold the consent of the Crown to the execution of the proposed work. Where Crown property is affected, the commissioners of woods and forests, who may give or withhold the consent of the Crown, have the bill submitted to them, and insist upon the insertion of protective clauses, or the omission of objectionable provisions. The Board of Trade offer suggestions in reference to bills affecting trade, patents, electric telegraphs, harbours, shipping, and other matters connected with the general business of that department. Bills for the improvement and sewerage of towns receive consideration by the local government board, by whom amendments are also suggested.[1] And in case a bill should affect the public revenue, similar communications will be necessary with the Treasury, and other revenue departments. And where the bill comes within the provisions of the Preliminary Inquiries Act,[2] amendments are introduced in compliance with reports from the Board of Trade.

Preliminary Inquiries Act.

When the amendments consequent upon these various

Limits to such amendments.

[1] The powers of the Secretary of State in such cases were transferred, by the Local Government Act, 1871, to the local government board. See also *infra*, pp. 843. 848.

[2] 14 & 15 Vict. c. 49; amended by 25 & 26 Vict. c. 69; and see *supra*, p. 770.

proceedings have been introduced, the printed bill, with all the proposed amendments and clauses inserted, in manuscript, is in a condition to be submitted to the committee: but care must be taken, in preparing these amendments, that they are within the order of leave, that they involve no infraction of the Standing Orders, and are not excessive in extent.[1] Where it was proposed to leave out the greater part of the clauses in the original bill, and to insert other clauses, the chairman of ways and means submitted to the house that the bill should be withdrawn.[2]

Notice of meeting of committee.

The clerk to the committee of selection, or to the general committee, gives at least four clear days' notice to the clerks in the private bill office, of the meeting of the committee on an opposed bill, and one clear day's notice in the case of an unopposed or re-committed bill; and if it should be postponed, he gives immediate notice of such postponement. In the case of bills not referred to the committee of selection or general committee, the clerk to the committee to which the bill is referred, or re-committed, is to give the like notices.

When first meeting postponed.

Filled-up bill to be deposited.

The agent is required to deposit in the private bill office a filled-up bill signed by himself, as proposed to be submitted to the committee, two clear days before the meeting of the committee; and a copy of the proposed amendments is to be furnished by the promoters to such parties petitioning against the bill as shall apply for it, one clear day before the meeting of the committee. In 1845, certain committees upon bills reported that no filled-up bill had been deposited by the agent as required, and that the committee had therefore declined to proceed with the bill, and had instructed the chairman to report the circumstance to the house.[3] In these cases the practice has been to revive the committees, and to give them leave to sit and proceed on a certain day, provided the filled-up bill shall have been duly deposited.[4]

[1] 108 Com. J. 406.

[2] Bristol Parochial Rates Bill, 1845; 100 Com. J. 535.

[3] 100 Com. J. 261. 302.

[4] Ib. 302. 304.

Declaration of members of committees.

Each member of a committee on an opposed private bill, or group of such bills, before he is entitled to attend and vote, is required to sign a declaration "that his constituents have no local interest, and that he has no personal interest" in the bill; "and that he will never vote on any question which may arise without having duly heard and attended to the evidence relating thereto." And no such committee can proceed to business until this declaration has been signed by each of the members.[1] If a member who has signed this declaration should subsequently discover that he has a direct pecuniary interest in a bill,[2] or in a company who are petitioners against a bill,[3] he will state the fact to the committee, and will be discharged by the house, or by the committee of selection, from further attendance.

Quorum to be always present.

Members not to absent themselves.

Proceedings suspended if quorum not present.

When all the members have signed the declaration, the committee may not proceed if more than one of the members be absent, except by special leave of the house:[4] but no member of the committee may absent himself, except in case of sickness, or by order of the house. If at any time more than one of the members be absent, the chairman suspends the proceedings, and, if at the expiration of an hour, more than one member be absent, the committee is adjourned to the next day on which the house shall sit, when it meets at the hour at which it would have sat, if there had been no such adjournment. Members not present within one hour of the time of meeting, or absenting themselves, are reported to the house at its next sitting, when they are either directed to attend at the next sitting of the committee, or, if their absence has been occasioned by sickness, domestic affliction, or other sufficient cause, they are discharged from further attendance.[5] If after a committee has been formed, a quorum

Members absent reported.

Excused, &c.

If quorum cannot attend.

[1] See Suppl. to Votes, 1854, p. 605; Votes, 1862, p. 453.

[2] Suppl. to Votes, 1849, p. 168; Ib. 1850, p. 72; Ib. 1851, p. 312; 10 Com. J. 386; 101 Ib. 904; 104 Ib. 357.

[3] 105 Com. J. 225; 108 Ib. 518. 524; Suppl. to Votes, 1853, p. 777; 1 June 1858, 113 Com. J. 200; 3 May 1860, 115 Ib. 218.

[4] Amended S. O. 19th March 1868.

[5] 110 Com. J. 123. 294; 112 Ib. 156. 168; 122 Ib. 97. 150, &c.

of members cannot attend, the chairman reports the circumstance to the house, when the members still remaining will be enabled to proceed, or such orders will be made as the house may deem necessary. If the chairman be absent, the member next in rotation on the list of members, who is then present, is to act as chairman: but in the case of a railway and canal committee, only until the general committee shall appoint another chairman, if they think fit.[1]

When chairman absent.

Referees on private bills.

In 1864, considerable changes were introduced into the procedure, by the constitution of referees on private bills, consisting of the chairman of ways and means, and not less than three other persons to be appointed by Mr. Speaker. The referees were to form one or more courts, three at least being required to constitute each court, a member in every case being chairman, but receiving no salary. The practice and procedure of these courts was prescribed by the chairman of ways and means, by rules to be laid before the house: but only one counsel was to be heard on either side unless specially authorized by the referees. According to the Standing Orders of 1864, the referees inquired into the engineering details of all works proposed to be constructed, the efficiency of such works and the sufficiency of the estimate; and into other particulars in the case of waterworks and gas bills. Every report made by them to the house, stood referred to the committee on the bill, by whom no further evidence was to be taken upon the matters reported upon by the referees. If the referees reported the estimate to be insufficient, or the engineering to be inefficient, the bill was not to be proceeded with, unless the house should otherwise order. The committee on a bill might also, subject to the approval of the chairman of ways and means, refer any question to the referees for their decision. Another important duty entrusted to the referees was the decision of the right of petitioners to be heard before committees, to which more particular reference will presently be made.

Their duties in 1864.

[1] See Votes, 1857, p. 212.

In 1865, it was ordered that if the promoters and opponents of any bill agreed that all the questions at issue between them should be referred to the referees, they were empowered to inquire into the whole subject-matter of the bill, and to report their opinion to the house; and if they reported that the bill ought to be proceeded with, it was to be referred to the committee on unopposed bills. In 1867, the committee of selection were empowered to refer to the court of referees, instead of to a committee, every gas and water bill of that session, except those relating to the metropolis, against which a petition endorsed for hearing before the referees had been presented, and the referees were to inquire into the whole subject-matter of the bill, and to report it, with or without amendments, to the house.[1] And in the same year, an Act was passed to enable the courts of referees to administer oaths and award costs, in certain cases, in the same manner as committees on private bills.[2] And, lastly, in 1868, in order to avoid the evils incident to the hearing of parties before two separate tribunals, first as to the engineering merits of a scheme, and secondly as to its policy and public utility,—the referees were associated with committees of the house. And under the present Standing Orders the committee of selection refer every opposed private bill, or any group of such bills, to a chairman and three members and a referee, or a chairman and three members, not locally or otherwise interested. From that time, the only separate court of referees was that for determining the *locus standi* of petitioners.[3]

Changes in 1865, 1867, and 1868.

Referees appointed to committees.

At first, the referees appointed to committees were accustomed to vote upon all questions, like members of the house; but, in 1876, a select committee, to whom the consideration of this practice was referred, reported an opinion adverse to

Referees not to vote.

[1] Instruction to committee of selection, 1st March 1867; 122 Com. J. 80.

[2] 30 & 31 Vict. c. 136.

[3] See *infra*, p. 817.

its continuance, upon constitutional grounds; and accordingly, on the 27th March 1876, the house ordered:—

"That it be an instruction to committees on private bills that referees appointed to such committees, may take part in all the proceedings thereof, but without the power of voting."[1]

Petitions for and against private bills, how presented.

All petitions in favour of or against or otherwise relating to private bills, or bills to confirm provisional orders or certificates (except petitions for additional provision), are now presented to the house, not in the usual way of presenting other petitions, but by depositing them in the private bill office, where they may be deposited by a member, party, or agent. Any petitioner may withdraw his petition, or his opposition, on a requisition to that effect being deposited in the private bill office, signed by himself or by the agent who deposited the petition. Every petition against a private bill which has been deposited not later than ten clear days after the first reading, and, in the case of a provisional order bill, not later than seven clear days after the examiner shall have given notice of the day on which the bill will be examined, or which shall have been otherwise deposited, in accordance with the Standing Orders, and in which the petitioners pray to be heard by themselves, their counsel, or agents, *stands referred* to the committee on the bill, without any distinct reference from the house. And, subject to the rules and orders of the house, such petitioners are to be heard upon their petition accordingly, if they think fit, and counsel heard in favour of the bill against such petition. Where petitioners have died after the deposit of their petitions, their sons, or their agents or executors, have petitioned to be heard, and, on the report of the Standing Orders Committee have been permitted to appear and be heard upon the petitions of the deceased petitioners,[2] or to deposit a new petition after the time limited.[3]

Petitions withdrawn.

Petitions against bill to stand referred.

Death of petitioners.

[1] 131 Com. J. 120; and see report and evidence of the committee.

[2] Lincolnshire Estuary Bill, 1851; 106 Com. J. 226. 233.

[3] Duke of Portland (Ardrossan and Glasgow Railway Bill); 109

Appearances on petitions.

The agent for each petition must be prepared with a certificate from the private bill office of his having entered an appearance upon the petition. This document is delivered to the committee clerk; and, unless it be produced, the petition will be entered in the minutes as not appeared upon. On the 23rd May 1848, a petition was presented, praying that a petitioner against a private bill be allowed to be heard upon his petition, notwithstanding he neglected to present a certificate from the private bill office of his having entered an appearance upon his petition, previous to the commencement of business by the committee. The petition was referred to the committee on the bill, without any further instruction.[1] A solicitor, who does not appear upon his own petition, cannot be heard before the referees, unless he has signed the roll of parliamentary agents.[2] Nor can a petitioner be heard otherwise than by *himself*, his counsel or parliamentary agent.[3]

Rules as to hearing petitioners.

Petitioners will not be heard before the committee unless their petition be prepared and signed in strict conformity with the rules and orders of the house, and have been deposited within the time limited,[4] except where the petitioners complain of any matter which may have arisen in committee, or of any proposed additional provision, or of the amendments as proposed in the filled-up bill. Part of a petition having been omitted by mistake, and afterwards added, it was ruled that such part was not referred to the committee.[5]

Com. J. 206; Suppl. to Votes, 1854, p. 606. Metropolitan Inner Circle Railway Bill, 1878; 133 Com. J. 112.

[1] 103 Com. J. 552; and see Suppl. to Votes, 1848, p. 395.

[2] Birkenhead, Chester, &c. Railway Bill, 1873; 1 Clifford & Rickards, *Locus Standi* Reports, 3; Combe Hill Navigation Bill, 1876; Ib. 216.

[3] Ib. 8.

[4] In the Heysham Pier Company (Railways) Bill, 1866, the committee determined that when Sunday was the last day for depositing a petition, its deposit on Monday was not a compliance with the order, and refused to hear the petitioners. But in later cases, it has been held that when Sunday is the last day for depositing a petition, the deposit may be made on the Monday. See 2 Clifford & Stephens, *Locus Standi* Reports, 4.

[5] 83 Hans. Deb. 3rd Ser. 487.

Petitions deposited after time.

If a petition be presented after the time limited, the only mode by which the petitioners can obtain a hearing, is by depositing a petition, praying that the Standing Orders be dispensed with in their case, and that they may be heard by the committee. The petition will stand referred to the Standing Orders Committee; and if the petitioners be able to show any special circumstances which entitle them to indulgence, and, particularly, that they have not been guilty of *laches*, the Standing Orders will be dispensed with.[1]

Special reference of petitions.

On the 17th May 1849, a petition from the Attorney-General against a private bill was brought up, and read; and it being stated that it was essential to the public interests that it should be referred to the committee on the bill, the Standing Order requiring all such petitions to be deposited in the private bill office, was read, and suspended, and an instruction given to the committee to entertain the petition.[2] In 1864, special instructions were given to the committee on a group of metropolitan railway bills, to hear the promoters of certain schemes not proceeded with in that session, against particular railway bills.[3]

In 1869, all the metropolitan street tramways bills were referred to the same committee, and it was ordered that all petitioners against any of the said bills be heard, without reference to any question of *locus standi*.[4] And in some other cases general powers to hear petitioners against bills,—generally hybrid bills,—or bills relating to the metropolis,—have been given to committees, which, without expressly alluding to *locus standi*, have practically left such questions to the discretion of the committee.[5] In such cases, it has been held that the jurisdiction of the referees is superseded

[1] 108 Com. J. 284. 670; Votes, 1854, p. 211. 329, &c.

[2] 104 Ib. 302.

[3] 119 Ib. 167. 190.

[4] 124 Ib. 63.

[5] 126 Ib. 59. 65. 93; 127 Ib. 312. Metropolis Gas Companies Bill, 1875; 130 Ib. 230; Manchester Corporation Water Bill, 1878; 133 Ib. 62; Solent Navigation Bill, 1881; 136 Ib. 466; Arklow Harbour Bill and Public Offices Site Bill, 1882; 137 Ib. 121. 241.

by the order of the house.[1] In other cases such powers have been given, subject to the rules, orders, and proceedings of the house.[2]

Grounds of objection to be specified.

No petition will be considered which does not distinctly specify the grounds on which the petitioners object to any of the provisions of the bill. The petitioners can only be heard on the grounds so stated; and if not specified with sufficient accuracy, the committee may direct a more specific statement to be given, in writing, but limited to the grounds of objection which had been inaccurately specified.

Petitions in favour.

Petitions in favour of private bills may influence the decision of the house, upon the second reading, but are not referred to the committee, as the petitioners are not parties to the bill. On one side are the promoters, and on the other petitioners against it: but petitioners in favour of the bill can claim no hearing before the committee, except as witnesses. It has been intimated that counsel may allude to the presentation of such petitions in argument, but may not examine witnesses in respect of their contents or signatures.[3]

Cases of *locus standi* before court of referees.

Such being the general rules relating to petitions, it is now necessary to enter upon an important change, recently introduced, in the mode of adjudicating upon formal objections to petitions, and the rights of petitioners to be heard. Prior to 1864, all such questions were heard and determined by the committee on the bill. Considerable inconvenience and expense were caused by this practice, as counsel were retained, and witnesses kept in attendance, on behalf of petitioners who were adjudged, at the eleventh hour, to have no claim to be heard. With a view to obviate these objections, and at the same time to introduce greater uniformity and certainty into the decisions upon these important questions, it was ordered, in 1864, that the referees should decide upon all petitions, as to the right of the petitioners to be heard, without prejudice,

[1] Commercial Gas Bill, 1875; 1 Clifford & Rickards, 150.

[2] 128 Com. J. 87. 176.

[3] Minutes of Group 2, 17th April 1861.

however, to the power of the committee on the bill to decide upon any question as to such rights arising incidentally in the course of their proceedings. To give effect to this order, a court of referees was specially constituted, under the presidency of the chairman of ways and means, for the adjudication of all questions of *locus standi*. This court, following generally the principles and precedents to be found in the decisions of committees, have reduced to a system, as far as possible, the rules affecting the rights of petitioners against private bills, and provisional orders or certificates.[1] So many exceptional circumstances naturally arise in each case, that nothing further will be here attempted than a review of the leading principles by which their decisions have been guided. For more detailed information, the reader must consult the clear and accurate reports of the cases to which frequent references are here given.

Rules for the hearing of such cases.

By one of the rules made by the chairman of ways and means, under the Standing Order, the promoters of a bill who intend to object to the right of petitioners to be heard against it, are to give notice of such intention, and of the grounds of their objection, to the clerk to the referees, and to the agents for the petitioners, not later than the eighth day after the deposit of the petition: but the referees may allow such notices to be given, under special circumstances, after the time limited. Such notices may also be withdrawn by notice in writing to the clerk to the referees. The time allowed for serving such notices of objection is exclusive of the day on which the petition was deposited.[2] It has been ruled that the service of such notices by post is not sufficient.[3]

When due service has been proved, if no one appears in support of the petition, the *locus standi* of the petitioners will be disallowed.[4]

[1] S. O. No. 87—90.

[2] London, Chatham, and Dover, &c. Railways Bill, 1866. Smethurst on *Locus Standi*, 6, and App. 97; 2 Clifford and Stephens, 2.

[3] Smethurst on *Locus Standi*, 7, and App. 98.

[4] Ib. 8; App. 91.

Such being the arrangements for hearing questions of *locus standi*, on the day appointed for hearing any case before the court of referees, the counsel for the promoters gives in a statement of objections to the right of petitioners to be heard against the preamble, or clauses of the bill, as the case may be; the counsel for the petitioners supports their claim; and the counsel for the promoters is heard in reply,—the speeches being thus limited to one on each side. Counsel heard.

For the purposes of argument on questions of *locus standi*, the allegations of a petition are ordinarily admitted: but where the right of petitioners to be heard depends upon special facts which are disputed, they may be called upon to prove them.[1] Allegations admitted.

Some petitioners pray to be heard against the preamble and clauses of the bill; some against certain clauses only; and others pray for the insertion of protective clauses, or for compensation for damage which will arise under the bill. Unless petitioners pray to be heard against the preamble, they will not be entitled to be heard, nor to cross-examine any of the witnesses of the promoters upon the general case, nor otherwise to appear in the proceedings of the committee until the preamble has been disposed of. Nor will a general prayer against the preamble entitle a petitioner to be heard against it, if his interest be merely affected by certain clauses of the bill.[2] The proper time for urging objections to parties being heard against the preamble, is when their counsel or agent first rises to put a question to a witness, or to address any observations to the committee. This is also the proper time for objecting that petitioners are not entitled to be heard on any other grounds. Such questions, however, are now rarely argued before committees; as, since 1864, the referees have decided upon the rights of petitioners to be heard, without prejudice, however, to the power of the com- Petitions against the preamble.

[1] Smethurst, 12; App. 93; 1 Clifford and Stephens, App. 41.

[2] Suppl. to Votes, 1843, p. 131; 1850, p. 45. 199, &c.

mittee to decide upon any question as to such rights arising incidentally in the course of their proceedings.

Landowners.

The owners of land proposed to be compulsorily taken by a bill, have always been allowed a right to be heard against the preamble and clauses of the bill, and also the lessees and occupiers of lands and houses, on whom notices are required to be served by the Standing Orders of both houses. And a railway company whose property is proposed to be taken has the same rights of *locus standi* as a private landowner.[1] The owner of minerals proposed to be compulsorily taken is in the same position as a landowner, whose land is to be taken, and is for all purposes of *locus standi* a landowner.[2] The lord of a manor has established his claim to be heard against a bill affecting his manorial rights.[3] The owners of river waters, springs, or wells, injuriously affected by bills, are entitled to be heard.[4] So also mill-owners, the working of whose mills will be affected by works proposed to be constructed above or below them.[5] Owners and occupiers of land in reasonable proximity to a canal, proposed to be stopped up, have been allowed a *locus standi*.[6] Petitioners are said to have no *locus standi* before a committee, when their property or interests are not directly and specially affected by the bill, or when, for other reasons, they are not entitled to oppose it. It has been held, for example, that petitioners praying for a revision of the tolls chargeable by railway companies, are not entitled to be heard, unless the question of tolls be involved in the bill.[7]

[1] Caledonian Railway Bill, 1873. 1 Clifford and Rickards, 7; Ib. 19; 3 Ib. 136. 201.

[2] Great Western Railway Bill, 1876; Ib. 221; 2 Ib. 130; 2 Clifford and Stephens, 256; 1 Clifford and Rickards, 19; 3 Ib. 136. 201.

[3] Bute Docks Bill, 1866; Smethurst, App. 95; Bradford Water Bill, 1869; 1 Clifford and Stephens, 39; 2 Ib. 89.

[4] Smethurst, 22-26. 31. Southport Water Bill, 1867; 1 Clifford and Stephens, 13; 2 Clifford and Rickards, 212.

[5] Birkenhead, Chester, &c. Railway Bill, 1873; 1 Clifford and Stephens, 1; 2 Ib. 50. 53; 1 Clifford and Rickards, 3. West Ham Local Board Bill, 1881; 3 Clifford and Rickards, 111. See also S. O. No. 14.

[6] 1 Clifford and Rickards, 216; 3 Ib. 55.

[7] Lancashire and Yorkshire Rail-

Traders.

But shipowners, traders, and others injuriously affected by the tolls, rates, or other provisions of a bill, have, with some exceptions, been allowed a hearing, provided they petition as a class, and not as individuals.[1] The referees, however, guarded themselves from deciding that, in no case, could an individual trader be heard ;[2] and have since given an extension to the *locus standi* of traders. In the case of the Great Western and Bristol and Exeter Railway Companies Bill, 1867, which, while authorizing an extensive combination of railway companies in western and south-western parts of England, did not make any alteration of tolls or rates, certain traders of Exeter, about fifty in number, were allowed a hearing, on the ground that their interests would be injuriously affected by the traffic arrangements proposed by the bill: but the corporation of Exeter, alleging similar objections, were refused a *locus standi*, as not representing the trading interests of that city so properly as the traders themselves, who had petitioned. The traders of Salisbury were also allowed to be heard against this same bill: but the corporations of Salisbury, Southampton, Glastonbury, and Shepton-Mallet failed to establish their right.[3] In the case of the North-Eastern Railway (Additional Powers) Bill, 1874, a single firm of traders were allowed to be heard, as the injury they would sustain from the bill appeared to be sufficiently substantial to support their claim.[4] In the same year, traders and other inhabitants of Plymouth were also heard against the South Devon Railway Bill.[5] In 1875, a single firm of merchants, who appeared to be substantial representatives of

way Bill, 1852, Suppl. to Votes, p. 150. Great Western, Shrewsbury and Birmingham, &c. Bill; Ib. p. 306. 308. 314 ; South Yorkshire Railway, &c. Group 11 A, 1862; Great Western and West Midland Railways Amalgamation, Group 13, 1863. South Eastern Railway Bill, 1881 ; 3 Clifford and Rickards, 97.

[1] Smethurst, 37-47 ; Fawcett, 38-45.

[2] Smethurst, 129 ; 1 Clifford and Stephens, 49-51.

[3] MS. Minutes of Referees ; 1 Clifford and Stephens, 55. See also case of Midland and Glasgow, and South Western Railways (Amalgamation) Bill, 1867 ; Ibid.

[4] 1 Clifford and Rickards, 107.

[5] Ib. 112.

the trade of Newry, were admitted to be heard against the Carlingford Lough provisional order.[1] And similar cases were so decided, in 1876, in the Caledonian Railway (Grangemouth Harbour) Bill;[2] and, in 1877, in the London and North-Western, Whitehaven, &c. Bill.[3] But while traders have been admitted, an incorporated chamber of commerce has been refused a hearing against a navigation bill, as they did not allege that, as a corporation, they were injuriously affected, and had no interest distinct from that of other traders who were petitioners.[4] The Mining Association of Great Britain, however, have been heard against a railway bill, on the ground that they were composed exclusively of one class of traders, and so far differed from a chamber of commerce, whose members are traders of all classes, and are not necessarily traders at all.[5]

Qualified interests.

It has been held that the owner of land on a line proposed to be abandoned, and of which the compulsory powers have expired, has no *locus standi*.[6] But an owner showing that he has sustained special damage, has been allowed a limited *locus standi*.[7] Lessees of minerals beneath a line proposed to be abandoned have been refused a *locus standi*.[8] The owners of land authorized by a former Act to be taken, and contracted for with the company, have been refused a hearing, on the ground that they were merely creditors:[9] but, on the other hand, the referees have held that the owner of certain premises, who, having received notice, had engaged other premises, and

[1] 1 Clifford and Rickards, 180.

[2] Ib. 210.

[3] 2 Ib. 34.

[4] Tyne Improvement Bill, 1876; 1 Clifford and Rickards, 268.

[5] Great Western Railway Bill, 1877; 2 Ib. 18, 303.

[6] Eastern Counties Railway; Suppl. to Votes, 1852, p. 84; London, Brighton, and South Coast Railway Bill, 1868; 1 Clifford and Stephens, 27. Midland Railway Bill, 1877; 2 Clifford and Rickards, 40; 3 Ib. 78.

[7] Caledonian Railway Bill, 1869; 1 Clifford and Stephens, 28; 2 Clifford and Rickards, 100, 231.

[8] 1 Clifford and Stephens, 29.

[9] Llanelly Railway and Docks Bill, 1866; Smethurst, App. 110; Dublin Trunk Connecting Railway Bill, 1867; 1 Clifford and Stephens, App. 37; Great Western Railway (Additional Powers) Bill, 1866; 1 Ib. 31.

had applied to the Court of Queen's Bench for a *mandamus* to compel the company to complete its contract, had a right to be heard against the clause of a bill which extended the time for completing a railway. So also a landowner, with whom a company had contracted to restore land not required for the railway, within a certain time, has been allowed a hearing against a clause extending the time for completing the line, so as to enable him to seek the insertion of a special saving clause for his contract.[1] And where a company applied for an extension of time for purchasing land and completing works, and it was shown that nothing had been done for the execution of the line, and that the company were under financial embarrassments, landowners on the line have been allowed a hearing.[2] Landowners whose land was proposed to be taken by a bill, but which was already under compulsory powers of purchase by another company, though not actually taken, have been held to have a *locus standi*, as they are not yet divested of their rights as owners.[3] But it has been decided that a landowner, the price of whose land has been fixed by a railway company, and the purchase-money lodged in court, had no *locus standi*, the legal interest in the land having passed from him to the company.[4]

Contingent damage.

Where land has been shown on the deposited plans, as intended to be taken, but the amended bill did not propose to interfere with it, or where other clauses affecting the interests of petitioners have been withdrawn, committees have held that the petitioners were not entitled to be heard.[5] In the case of a bill for extension of time for purchase of land and completion of works, it has been held that the owners of

[1] Metropolitan Railway Bill, 1867; 1 Clifford and Stephens, 32.

[2] Drayton Junction Railway Bill; Wrexham, Mold, and Connah's Quay Railway Bill, 1867; Ib. 28. 34.

[3] 1 Clifford and Rickards, 207.

[4] Ib. 220.

[5] Cork and Waterford Railway Bill, Suppl. to Votes, 1854, p. 340; Colne Valley and Halstead Railway, and Witney Railway Bills, Group 5, 1859; Wimbledon and Dorking Railway Bill, Group 3, 1860; Teign Valley Railway Bill, Group 4, 1863.

certain lands which had been excluded from the operation of the bill, as amended, had no *locus standi* against the bill:[1] but in another case, it has been held that a landowner, whose lands were proposed to be taken in the bill, as read a second time, was entitled to be heard, though his lands were omitted from the bill as submitted to the committee.[2] And the referees, not having the amended bills before them, have supported the right of landowners to be heard, where their lands are proposed to be taken by the bill as deposited.[3] Petitioners whose property was not taken, but who apprehended injury, by reason of the contiguity of a railway, have been refused a hearing;[4] and this rule has been strictly adhered to, in numerous cases, by the referees.[5] In some exceptional cases, however, of special danger, disturbance, or injury, petitioners so affected have been allowed a hearing.[6] Thus, owners and occupiers of houses have been heard who complained that their property would be injured and shaken by the proposed line, though untouched by it, and have obtained protective clauses.[7] It has, however, been laid down as a settled practice that a landowner, or inhabitant, cannot claim a *locus standi* on the ground that proposed works will destroy the beauty or salubrity of a place.[8] But the owners of glass works, who alleged that their business would be irretrievably injured by proposed works, have been heard, their case being sufficiently exceptional to justify a departure from the general principle of previous decisions,—viz., that landowners can only be heard when their land is actually taken or interfered with.[9] The trustees of a hospital who

[1] Severn Valley Railway Bill, 1856; Minutes, vol. i. p. 114.

[2] Lancaster and Carlisle Railway Bill, 1858; Minutes, vol. i. p. 114.

[3] Smethurst, 19; 1 Clifford and Stephens, 47.

[4] Suppl. to Votes, 1847, i. 323.

[5] Smethurst, 26-28; 101, 102. 117; Crystal Palace and South London Junction Railway Bill, 1869; 1 Clifford and Stephens, 40. 1 Clifford and Rickards, 80; 2 Ib. 38.

[6] 1 Clifford and Stephens, 40-44; 2 Clifford and Rickards, 75.

[7] East Gloucestershire Railway Bill, 1862; 2 Clifford and Stephens, 189; 1 Clifford and Rickards, 46.

[8] 1 Clifford and Rickards, 203.

[9] South Eastern Railway Bill, 1876; 1 Clifford and Rickards, 258.

alleged that, although no land was to be taken by a railway, great injury would arise to the inmates from the noise and vibration of passing trains, have failed to establish a right to be heard.[1] The trustees of a church, who alleged that the services would be interfered with by the proximity of a railway, were not allowed a hearing.[2] But in numerous cases, petitioners complaining of interference with their access to their premises, or to the sea, or other waterside, have been allowed a *locus standi*, although their property was not directly affected.[3] The displacement of population has not been a sufficient ground of opposition on the part of school boards and local authorities.[4]

Exceptional cases.

Petitioners whose property was not affected by the bill, but by the main line sanctioned by a former Act, have failed to establish a right to be heard.[5] Where no fresh powers affecting the property of a petitioner are sought, his *locus standi* has been disallowed.[6] The owners of mineral property have been refused a *locus standi* as landowners:[7] but have been heard against the provisions of bills relating to tolls.[8] It has been held that petitioners using a canal for the purposes of traffic were not entitled to be heard against a bill for the purchase of that canal by a railway company.[9] A hearing against the preamble has been refused to landowners where the promoters have agreed to insert a proviso in the bill that their land should not be taken.[10] A landowner will not be heard if no power is taken in the bill for the purchase of his land otherwise than by agreement.[11] The owner of an

[1] North British Railway Bill, 1877; 2 Clifford and Rickards, 54.

[2] Ib. 249.

[3] Ib. 140. 197; 3 Ib. 60. 70. 226.

[4] 3 Ib. 182. 185. 223.

[5] Suppl. to Votes, 1847, ii. 1070. 1113. Skipton and Kettlewell Railway Bill, 1881; 3 Clifford and Rickards, 96.

[6] Metropolitan Railway Bill, 1879; 2 Clifford and Rickards, 207.

[7] Suppl. to Votes, 1853, p. 713.

[8] North Staffordshire Railway Bill, 1865; Smethurst, App. 120; 2 Clifford and Rickards, 34.

[9] Suppl. to Votes, 1847, ii. p. 1207; 1850, p. 147.

[10] Caledonian Railway Bill, Group 17, 1860.

[11] Aldrington, Hove and Brighton Gas Bill, 1866; Smethurst, App. 107.

equitable interest in land has been heard, where the legal estate was vested in trustees.[1] It has been held that petitioners affected by an underpinning clause of an underground railway, although their property was outside the limits of deviation, were entitled to be heard.[2] The referees will determine, according to the circumstances of each case, whether petitioners have such an interest as to entitle them to be heard; or to what extent, and with what restrictions, they may claim a hearing; and such circumstances will necessarily vary according to the special relations of the petitioners, and the nature and objects of the bill itself.[3]

Bills opposed in both houses.

A petitioner who has not opposed a bill in the other house is not precluded from being heard upon his petition in the House of Commons;[4] but the *locus standi* of petitioners has been disallowed, where their opposition in the other house has been withdrawn, and they have consented to protective clauses.[5] So, if the parties agree to abide by the decision of the committee, in one house, they will not be heard in the other; but it is otherwise if they have not so agreed.[6] Petitioners, having tendered a clause in the House of Lords, which was rejected by the committee, and then accepted two other clauses, with alterations suggested by them, were held not to be precluded from a hearing before the committee of the Commons, as the clauses they had accepted were of minor importance, and had only been acquiesced in conditionally upon the acceptance of their own clause, which had been rejected.[7] Certain petitioners, who, having failed in opposing the preamble of a bill in the House of Lords, afterwards

[1] Radstock and Bath Railway Bill, 1865; Smethurst, App. 17.

[2] Metropolitan and Metropolitan District Railway Companies Bill, 1879; 2 Clifford and Rickards, 193.

[3] Suppl. to Votes, 1850, p. 45. 99. 175. 181; Ib. 1852, p. 301. 314; Ib. 1853, p. 959. 1008, &c.; Ib. 1854, p. 316. 435. 487; and see *Locus Standi* cases by Smethurst, Fawcett, Clifford & Stephens, and Clifford & Rickards.

[4] Thames Subway Bill, 1866; Smethurst, App. 162.

[5] Ib. 95; 2 Clifford and Rickards, 27.

[6] Whitehaven, Cleator, &c. Railway Bill, 1875; 1 Clifford and Rickards, 200.

[7] Waterford and Wexford Railway Bill; Ib. 275.

accepted protective clauses, have not been allowed to renew their opposition in the Commons.[1]

Abstraction of water, &c.

In the case of the Devon and Dorset Railway Bill, 1853, certain petitions were specially referred to the committee, with an instruction to hear the parties, who otherwise had no *locus standi* against the bill:[2] but the committee did not admit the petitioners to a general *locus standi* against the preamble of the bill, but restricted them within the scope of the allegations of their petition.[3] It has been ruled that a petitioner whose petition alleges that his land is taken, and who prays to be heard against the preamble and clauses of the bill, may be heard against the bill generally, though his petition contains no allegation that the railway is unnecessary, or reference to the preamble except in the prayer of the petition.[4] A landowner, whose land was to be taken, has been held to have a general *locus standi* against an improvement bill, for widening streets, erecting slaughterhouses, &c.[5] And, it has further been held that a landowner has a general *locus standi* against an *omnibus* railway bill, however limited his interest.[6] It has been held that the abstraction of underground water by a waterworks bill, does not give parties, whose water supply may be affected, a right to be heard.[7] But where scientific evidence has been adduced to prove that the underground water flowed in a defined channel, the petitioners have been heard.[8] A *locus standi* has been allowed where a conduit was proposed to be taken through part of the property of the

[1] Local Government Provisional Order (Lower Thames Valley) Bill, 1877; 2 Clifford and Rickards, 27.

[2] 108 Com. J. 572.

[3] Suppl. to Votes, 1853, p. 1000.

[4] Resolution of General Committee of Railway and Canal Bills, 1861. Burntisland Direct Mineral Railway Bill, 1876; 1 Clifford and Rickards, 207.

[5] Liverpool Improvement Bill, 1867; 1 Clifford and Stephens, 19; App. 49. Belfast Improvement Bill, 1878; 2 Ib. 69.

[6] London and North Western Railway Bill, 1868; 1 Clifford and Stephens, App. 62, 63; Caledonian Railway Bill, 1870; 2 Ib. 37.

[7] Southport Water Bill, 1867; Ib. 20; App. 13; Birkenhead Improvement Bill, 1867; Ib. 22; Windsor and Eton Water Bill, 1868; Ib.

[8] London and South Western Spring Water Bill, 1882; 3 Clifford and Rickards, 179.

petitioner.[1] The owners of surface waters have maintained their right to be heard as landowners.[2]

Locus standi against amalgamation bills.

Numerous questions have arisen in regard to the *locus standi* of railway companies, in opposing bills for the amalgamation of other companies; and such *locus standi* has been admitted or refused, according to the degree in which the interests of the opposing companies have been affected. In the case of the York, Newcastle and Berwick (Newcastle and Carlisle Railway, and Maryport and Carlisle Railway Amalgamation) Bills, the Lancaster and Carlisle and the Caledonian Railway Companies were refused a *locus standi* against the preambles of the bills, but were admitted to be heard against the clauses.[3] In the case of the York, Newcastle and Berwick, York and North Midland, and Leeds Northern Railways Amalgamation Bill, the *locus standi* of the Hull and Selby Railway Company was objected to, and, after argument, admitted.[4] In the case of the Aberdeen and Scottish Midland Junction Railways Amalgamation Bill the *locus standi* of the Dundee and Arbroath Railway Company was admitted, and that of the Scottish Midland Railway Company refused.[5] And in other more recent cases before committees and the referees, some companies have been admitted to be heard against amalgamation bills,[2] and others refused.[7]

[1] Bradford Water Bill, 1868; 3 Clifford and Rickards, 23.

[2] Ib. 24.

[3] Suppl. to Votes, 1849, p. 64.

[4] Ib. 1854, p. 609.

[5] 1856, Minutes, p. 67; Suppl. to Votes, p. 73.

[6] The London and North Western, Midland, Great Northern, and Manchester, Sheffield, and Lincolnshire Junction Railway Companies were heard against the Lancashire and Yorkshire and East Lancashire Amalgamation Bill, 1858; Minutes of Committees, i. 244, 245. The Great Western Railway Company were heard against the Chester and Holyhead Railway Amalgamation Bill, 1858; Ib. i. 282; Caledonian and Scottish North Eastern Companies Bill, 1866; Smethurst, App. 163; Fawcett, 25 *et seq.*; 2 Clifford and Rickards, 172. 243; 3 Ib. 143. 145.

[7] Manchester, Sheffield, and Lincolnshire Railway Company against the Chester and Holyhead Railway Amalgamation Bill, 1858; Minutes of Committees, i. 282; Edinburgh and Glasgow Railway Companies Bill, 1865; and Brecon and Merthyr Tydfil Railway Amalgamation Bill, 1865; Smethurst, App. 136. 138;

Special injury to be shown.

In the case of the Edinburgh and Glasgow, and Stirling and Dunfermline Railways Amalgamation Bill, the Stirling and Dunfermline Railway Company were not admitted to be heard, on the ground that an agreement had been entered into between the companies for the settlement of all disputes, and that the bill had been amended in conformity with that agreement, and signed by the chairman of the two companies.[1] But a *locus standi* has been allowed to parties holding an agreement with the promoters, in order to secure themselves against interference with such agreement.[2] And where it appeared that the promoters were debarred by an agreement from executing the works proposed to be authorized by the bill, the committee decided that the bill could not be further proceeded with.[3] The general ground upon which petitioners are admitted to oppose amalgamation bills is, that the amalgamation itself will injuriously affect them, and not that they can show any grievance resulting from past legislation.[4]

Competition.

Landowners.

It had formerly been held, as a parliamentary rule, that competition did not confer a *locus standi:* but in course of time this rule was considerably relaxed, and numerous exceptions were, in practice, admitted. The proprietors of an existing railway had no right to be heard upon their petition against another line, on the ground that the profits of their undertaking would be diminished: but if it were proposed to take the least portion of land belonging to the company, their *locus standi* immediately became unquestionable.[5] The

Fawcett, 26; Midland and Glasgow and South Western Railway Companies Bill, 1867; 1 Clifford and Stephens, 55; App. 72; 2 Clifford and Rickards, 36-103. 299; 3 Ib. 57, 58. 88. 107.

[1] Minutes of Committees, 1858, p. 385.

[2] Oxford, Worcester, and Wolverhampton, and Newport and Abergavenny, &c. Railways Amalgamation Bill; Minutes of Group 7, 1860.

[3] Devon Central Railways Bill; Minutes of Group 3, 1861, p. 90. North British Railway (General Powers) Bill, 1881; Group 12, Minutes of Proceedings, p. 2.

[4] Gloucester and Berkeley Canal Bill, 1874; 1 Clifford and Rickards, 77. See also London and South Western, Midland and Somerset and Dorset Railway Bill; Ib. 240–247; 3 Ib. 58. 97.

[5] But see Monmouthshire Railway and Canal Bill; Suppl. to Votes, 1852, p. 283, 284.

result of this rule was, that most of the great parliamentary contests between railway companies were conducted in the names of landowners. Each company obtained the signatures of landowners to petitions against the rival scheme; instructed counsel to appear upon them; and defrayed all the costs of the nominal petitioners. A variation of the practice, however, was introduced as regards competing schemes referred to the same committee; and, in 1848, the rule was further relaxed in favour of the proprietors of canals or navigations.[1] An existing water or gas company was held to have no *locus standi* against a new company proposing to supply the same district, unless their property were taken or interfered with; but in later cases this rule was not enforced.[2] At length, in 1853, the house agreed to a Standing Order, by which it was competent to the committee on any private bill, and since 1864, to the referees, to admit petitioners to be heard against the bill, on the ground of competition, if they shall think fit; and in compliance with this order, committees and referees have since admitted,[3] or refused,[4] a hearing to petitioners, according to their opinion of the extent and directness of the competition, in respect of which their claim to be heard was founded.[5] In cases where

[1] 103 Com. J. 309; and see Suppl. to Votes, 1859, pp. 147, 148.

[2] Great Central Gas Consumers' Company Bill, 1850; Minutes.

[3] Dublin and Meath Railway Bill, 1858; Minutes of Committees, i. 447; and see Ib. ii. 300 (one water company heard against another, on the ground of competition). See cases decided by referees collected, Smethurst, 37-70; App. 133-167; and Fawcett on the Court of Referees, 24-31; also cases of Brecon and Merthyr Railway, and Rhymney Railway Bills, 1867; 1 Clifford and Stephens, 105. 121; Batley Corporation Water Bill, 1871; 2 Ib. 97; Birmingham and Lichfield Railway Bill, 1872; Ib. 223; 2 Clifford and Rickards, 93. 121. 134. 172. 240; 3 Ib. 25. 126. 228; 2 Ib. 177. 316 (railways and tramways); 3 Ib. 109. 114 (gas); 2 Ib. 251 (competition between gas companies and a corporation as to electric lighting).

[4] Minutes of Committees, 1856; vol. i. p. 59; 1857, vol. i. p. 165; 1858, vol. i. p. 268-387; and see Smethurst, 50. 54, &c.; Fawcett, 23 *et seq.* In 1858, a proposal for limiting this order was withdrawn. North and South Western Junction Railway Bill, 1871; 2 Clifford and Stephens, 116. Alcester and Stratford-upon-Avon Railway Bill, 1871; Ib. 128; 3 Clifford and Rickards, 167. 177. 321.

[5] 1 Clifford and Stephens, 60-83; 1 Clifford and Rickards, 73; 3 Ib. 169.

it was only proposed to improve an existing competition a *locus standi* has not been allowed.[1]

Running powers.

A railway company having running powers over a line has been allowed to be heard against the concession of the same powers to another company,[2] but this precedent has not been followed by the referees, who have not allowed parties to be heard against the granting of running powers and other facilities, or powers of amalgamation, to other companies.[3] In the case of the North Staffordshire Railway Bill, 1867, however, the Lancashire and Yorkshire Railway Company, which had running powers over the line of the former company, established their right to be heard on the ground that the bill conveyed greater powers to the London and North Western Railway Company, almost amounting to amalgamation, to the injury of the petitioners as competitors.[4] So also, in 1874, the Midland Railway Company were allowed to be heard against certain clauses in the London and North Western Railway (Wales) Bill, giving running and other powers over a branch of the Monmouthshire Railway;[5] and, in 1875, the London and North Western Railway Company were heard against the Metropolitan Railway Bill, which provided for the continuous use and joint management of several lines, for purposes of through traffic, in competition with the line of the petitioners.[6]

Steamboats.

A steamboat company has been refused a hearing against the preamble of a bill empowering a railway company to raise further capital for the maintenance of steamboats, the railway company being already proprietors of steamers, under the authority of a former Act.[7]

[1] 2 Clifford and Rickards, 133. 279; 3 Ib. 225.

[2] Garston and Liverpool Railway Bill, Group 13, 1861; resolution of General Committee on Railway and Canal Bills, 1861.

[3] Smethurst, 56 *et seq.*; 1 Clifford and Rickards, 172; 3 Ib. 57. 88. 89.

[4] 1 Clifford and Stephens, 102.

[5] 1 Clifford and Rickards, 96.

[6] Ib. 173.

[7] London, Chatham, and Dover Railway Bill, 1861; Minutes, i. 42.

Tramways.

Railway companies have been refused a *locus standi*, on the ground of competition, against tramway bills.[1] By Standing Order, No. 135, owners and occupiers of houses injuriously affected are entitled to be heard; and the claims of frontagers to a hearing have been allowed on various grounds.[2]

In the case of railway and canal bills, the rights of petitioners have been further extended by the following Standing Orders:

In what cases railway companies to be heard.

"Where a railway bill contains provisions for taking or using any part of the lands, railway, stations, or accommodations of another company, or for running engines or carriages upon or across the same, or for granting other facilities, such company shall be entitled to be heard upon their petition against the preamble and clauses of such bill."[3]

Municipal authorities and inhabitants of towns, &c.

"It shall be competent to the referees on private bills to admit petitioners, being the municipal or other authority having the local management of the metropolis, or of any town, or the inhabitants of any town or district alleged to be injuriously affected by a bill, to be heard against such bill, if they shall think fit."

Local authorities to be heard against lighting and water bills.

"The municipal or other local authority of any town or district, alleging in their petition that such town or district may be injuriously affected by the provisions of any bill relating to the lighting or water supply thereof, or the raising of capital for any such purpose, shall be entitled to be heard against such bill."

And this latter order has superseded several previous decisions of the referees; and, in short, removes such cases from their jurisdiction.[4]

Petitioners claiming to be heard under the latter Standing Order must distinctly allege that the town or district will be injuriously affected, and must be prepared to show some *primâ facie* ground for such allegation.[5] In some cases cor-

[1] 2 Clifford and Stephens, 142; 1 Clifford and Rickards, 13.

[2] 3 Clifford and Rickards, 73. 103. 105. 185. 224. 242.

[3] See leading case of Caledonian Railway (Additional Powers) Bill, 1872; 2 Clifford and Stephens, 256.

[4] See Dudley Gas Bill, 1881; 3 Clifford and Rickards, 48; Fylde Water Bill; Ib. 54. Birmingham Corporation Bill, 1883; MS. Minutes of Referees.

[5] Smethurst, 71-75; Fawcett, 31-38; 2 Clifford and Rickards, 115.

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porations have been heard as representing the whole body of merchants, traders, workmen, and others, residing in a borough.[1] In the case of petitions from the inhabitants of a town, it must also be shown that they fairly represent the general body of inhabitants.[2] Numerous decisions of the referees arising out of the application of this Standing Order have established the general grounds upon which such bodies are entitled to be heard: but the cases have varied so much in their circumstances, that no analysis of them would be adequate for the practical guidance of parties.[3] It has been held that when a corporation has petitioned against a bill, and also the inhabitants of the borough, that the latter were represented by the former, and were not entitled to be heard.[4]

Consumers of gas and water.

In many cases consumers of gas and water have been admitted to oppose gas and water bills affecting their area of supply.[5] But where the petitioners were only affected in common with other ratepayers, they have failed to establish their claim.[6] Residents in a new district, proposed to be supplied with gas, have no *locus standi*, as they are not compelled to use the gas which will be supplied, nor restrained from manufacturing their own.[7] Petitioners have not been heard against bills for raising additional capital only.[8]

It is provided by a Standing Order, that

Petitions against tramway bills.

"The owner or occupier of any house, shop or warehouse, in any street through which it is proposed to construct a tramway, and who alleges in any petition against a private bill or provisional order, that the construction or use of the tramway proposed to be authorised thereby will injuriously affect him in the use or enjoyment of his premises, or in the conduct of his trade or business, shall be entitled to be heard on such allegations before any select committee to which

[1] Gun Barrel Proof Bill, 1868; Clifford and Stephens, 57.

[2] Smethurst, 75, 76; Fawcett, 32; 1 Clifford and Stephens, 85 *et seq.*; 2 Clifford and Rickards, 78.

[3] See 1 Clifford and Stephens, 84–102; 1 Clifford and Rickards, 22. 30.

[4] King's Lynn Gas Bill; 2 Clifford and Stephens, 5.

[5] 1 Clifford and Rickards, 16. 59. 124. 135. 142, 143. 214; 2 Ib. 10; 3 Ib. 40. 68. 118.

[6] Ib. 144.

[7] Ib. 78. 267.

[8] 3 Ib. 54. 58.

such private bill, or the bill relating to such provisional order, is referred."

And it has been ruled that this Standing Order is not necessarily confined to an obstruction in front of a petitioner's house; but that he is at liberty to show how the proposed tramway would injuriously affect his interests.[1]

Shareholders or other persons represented.

A ground of objection frequently taken to the *locus standi* of petitioners is, that they are shareholders or members of some corporate body by whom the bill is promoted, and that being legally bound by the acts of the majority, they are precluded from being heard as individual petitioners.

Cases cited.

This objection was argued at great length in the case of the Birmingham and Oxford Junction Railway Bill, in 1847, when the committee[2] decided that shareholders in the company were not entitled to be heard. Again, in the London, Brighton and South Coast Railway Bill, in 1848,[3] it was determined "that the general rule, that in the case of a joint-stock company the decision of the majority is binding on the minority, ought to be observed, and that the minority of the shareholders in this case had no *locus standi* before the committee." In the Queensferry Passage Bill, in 1848, it was decided that individual trustees of the Queensferry passage could not be heard against the bill, promoted by the general body of the trustees.[4] In 1857, it was held that the vestry of St. George's, Hanover Square, was not entitled to be heard against the Finsbury Park Bill, on the ground that the vestry was represented in the Metropolitan Board of Works, by whom that bill was promoted.[5] And in 1858, merchants, shipowners, and dock ratepayers of Liverpool were not admitted to be heard against the Mersey Docks and Harbour (New Works) Bill, on the ground that they formed

[1] King's Cross and City Tramways Bill, 1878; 2 Clifford and Rickards, 106. See also Ib. 139. 296; 3 Ib. 105. 224. 242.

[2] Mr. Goulburn, chairman; Suppl. to Votes, 7th May 1847.

[3] Sir R. Peel, chairman; Suppl. to Votes, 1848, p. 309.

[4] Minutes of Committee, 14th April 1848.

[5] Minutes of Committee.

part of a body represented by the trustees, who were the promoters of the bill.[1] In 1865, the vestry of Bermondsey were refused a hearing against the Whitechapel and Holborn Improvement Bill, as being represented in the Metropolitan Board of Works, the promoters of the bill.[2] In 1871, the referees determined in the case of the Ilkley Local Board Bill, that certain petitioners being owners of property and ratepayers could not be heard against the bill, being represented by the local board, by whom the bill was promoted.[3] In the same year, in the case of the Bristol Port and Channel Dock Bill, promoted, among others, by the corporation of Bristol, it was held that such petitioners only as were owners of property in Bristol, and not municipal electors, were entitled to a hearing.[4] But in 1872, in the case of the South London Gas Bill, it was decided that vestries, district boards, and individual consumers, as well as the Metropolitan Board of Works, were entitled to be heard.[5] In the same year it was ruled in the case of the Metropolitan Street Improvements Bill, promoted by the Metropolitan Board of Works, that vestries, public bodies, and ratepayers, represented at the board, although their interests were divided, had no *locus standi*.[6]

Special interests.

In 1876, it was held, in the case of the Chesterfield Borough Improvement and Extension Bill, that owners and occupiers outside the borough, who would become liable to new taxation under the bill, were entitled to be heard; that ratepayers within the borough, being represented by the corporation who promoted the bill, could not be heard against the common seal; but that certain petitioning owners, who were not ratepayers, having no voice in the election of the corporate body, were entitled to a *locus standi*.[7] And, in the

[1] Minutes of Committees, 1858, vol. ii. p. 117.
[2] Smethurst, App. 187.
[3] 2 Clifford and Stephens, 97.
[4] Ib. 121.
[5] Ib. 220.
[6] Ib. 265.
[7] 1 Clifford and Rickards, 211.

Huddersfield Water and Improvement Bill, 1876, it was decided, that owners within municipal limits, when a new liability is to be imposed upon them, are not represented by the corporation, nor need they petition as a class. Each owner has a grievance affecting his individual property, and consequently a distinct *locus standi*.[1] In the Newcastle-under-Lyme Extension and Improvement Bill, 1877, it was ruled, that the interests of the inhabitants of a parish, to be merged in the borough, were distinct from those of the guardians, and that owners also were entitled to be heard.[2] In 1850, the committees on the Shrewsbury and Hereford, the Shropshire Union, &c., and the Waterford and Kilkenny Railway Bills,[3] determined that dissentient shareholders could not be heard. On the other hand, in the Manchester Cemetery Bill, in 1848, objection was taken to the *locus standi* of certain petitioners, being trustees and proprietors of shares in the cemetery, on the ground that they were a minority of a corporate body, in respect of interest in which body they opposed the bill; but the committee determined that they were entitled to be heard.[4] In the South Yorkshire Railway and River Dunn Bill, 1852, the committee held that a shareholder should be heard against the clauses, but not against the preamble.[5] In the North British Railway Bill, 1853, shareholders in the company were heard against the bill.[6] With very few exceptions, however, it had been the rule, in the Commons, not to hear dissentient shareholders, unless they had any interest different from that of the general body of shareholders.[7] And in 1853, the house declared by a Standing Order that "where a bill is promoted by an incorporated company, shareholders of such company shall not be heard against such bill, unless their interests, as

[1] 1 Clifford and Rickards, 230; 2 Ib. 149.

[2] 2 Ib. 47.

[3] Suppl. to Votes, 1850, pp. 41. 43. 75. 182.

[4] Minutes of Committee, p. 136.

[5] Suppl. to Votes, 1852, p. 298.

[6] Ib. 1853, p. 716.

[7] Ib. 1847, ii. pp. 1110. 1254; 1848, pp. 309. 398; 1850, pp. 72. 75; 1851, p. 111. 115. 300. 371; 1852, pp. 298; 1853, p. 1013.

affected thereby, shall be distinct from the general interests of such company."[1]

In 1867, the referees decided that the Great Eastern Railway Company were not entitled to be heard against the Tendring Hundred Railway Bill, on the ground that they were holders of shares in a portion of the company's capital, and that they failed to establish an interest distinct from that of the general body of the shareholders;[2] and later decisions of the referees have been founded, in each case, upon the nature of the interest of the petitioners, and the manner in which it is affected by the provisions of the bill.[3]

By another Standing Order,[4]

Dissentient shareholders.

"In case any proprietor, shareholder or member of or in any company, association or co-partnership, shall by himself, or any person authorised to act for him in that behalf, have dissented at any meeting called in pursuance of Standing Orders 62 to 66, or at any meeting called in pursuance of any similar Standing Order of the House of Lords, such proprietor, shareholder or member shall be permitted to be heard by the committee on the bill, on a petition presented to the house, such petition having been duly deposited in the private bill office."

Rule in the Lords.

For many years a different rule prevailed in the Lords; and shareholders who had dissented from the bill at the meeting called in pursuance of the Wharncliffe order,[5] were expressly permitted to be heard, and were even heard without such dissent.[6] In the case of preference shareholders, the Commons had been obliged to depart from their usual practice.[7] The proprietor of preference shares has a special interest, often opposed to that of the general body of shareholders, and justice requires that he should not be excluded

Preference shareholders.

[1] Com. S. O. No. 131; and see Minutes of Morayshire Railway Bill, 6th June 1860; 3 Clifford and Rickards, 77.

[2] 1 Clifford and Stephens, 8.

[3] Ib. 103–110; 1 Clifford and Rickards, 43. 51. 89. 102; 2 Ib. 101. 273; 3 Ib. 91.

[4] S. O. No. 132.

[5] See *infra*, p. 881.

[6] Caledonian Railway, &c. Bill, by order, 17th July 1850.

[7] South Eastern (3 and 4 shares), 1850; Suppl. to Votes, pp. 165. 195. South Devon Railway Bill; Ib. p. 23. Shropshire Union, &c. Bill; Ib. pp. 72, 73. York, Newcastle, and Berwick Bill; Ib. p. 102.

from a hearing.[1] Yet, when it has appeared to the committee that preference shareholders had not such a special interest in the bill as to entitle them to be heard, their claim has not been admitted.[2] The holders of "creditors' stock" have been refused a hearing against a railway bill; and the committee declined to reconsider their decision.[3] It has been held that shareholders who dissented at a Wharncliffe meeting were not entitled to be heard, as such meeting, though held, had been unnecessary under the Standing Orders.[4] Preference shareholders have been allowed a limited *locus standi* against the capital clauses of the bill, and against so much of the preamble as related thereto.[5]

Informalities in petitions.

Objection is often taken that a petition is informal, according to the rules and orders of the house applicable to petitions generally,[6] or as specially applicable to petitions against private bills. In the Glasgow Gas Bill, 1843, an objection was taken, that the seal attached to a petition was not the corporate seal of a company; and when this was proved to be the case, all the evidence in support of the petition was ordered to be expunged.[7] On the 7th May 1847, a motion was made that it be an instruction to the committee on the Great Northern Railway Bill, that they do entertain a petition, signed by the chairman of a company, as the petition of that company, although it does not bear the corporate seal of the company, but was negatived.[8] In the Worcester New Gas Bill, 1848, a petition was not received, as not having been legally sanctioned by the commissioners, whose petition it purported to be.[9] And in 1866, the referees refused a hearing to the commissioners of Bray against the Bray Improvement Bill, as the meeting at which their petition had been signed was proved not to have been

Common seal.

[1] London and North Western Railway (New Lines) Bill, 1875; 1 Clifford and Rickards, 167; 2 Ib. 169; 3 Ib. 77.

[2] Suppl. to Votes, 1855, p. 259.

[3] Eastern Union Railway Bill; Suppl. to Votes, 1856, i. p. 55.

[4] Redditch Railway (Capital, &c. Bill, Group 16, 1862.

[5] Caledonian Railway Bill, 1872 2 Clifford and Stephens, 258.

[6] See *supra*, p. 610.

[7] Minutes of Committee.

[8] 102 Com. J. 490.

duly convened.[1] In 1857, in the East Somerset Railway Bill, the committee refused to entertain a petition signed by one trustee of a turnpike road, the Act requiring three signatures;[2] and in 1866, the referees applied the same rule to petitioners against the Thames and Severn Navigation Bill, and the Birmingham Waterworks Bill.[3] In the case of the Caledonian Railway (Edinburgh Stations) Bill, 1866, the referees refused a hearing to petitioners who had subscribed the petition for other parties.[4] But in the case of the Sligo Borough Improvement Bill, the referees allowed the Sligo town and harbour commissioners to be heard, on a petition signed by the major part of a committee appointed by the governing body to direct the proceedings in reference to the opposition to the bill.[5] Petitioners have failed to secure a hearing before a committee, on account of forged signatures to their petition.[6] But the Court of Referees will not inquire into the genuineness of signatures.[7]

Authority to sign.

In 1874, a petition signed by the chairman of the Neath Harbour Commissioners was held not to be the petition of the commissioners, as it contained no allegation of his authority to sign on their behalf.[8] But the petition of a committee of poor law guardians, acting as a rural sanitary authority, signed by their chairman, under a resolution of the sanitary authority, has been admitted, as it appeared that the guardians, in that capacity, had no common seal.[9] In 1877, a petition signed by several Derbyshire magistrates, who had been appointed a committee by the quarter sessions, for that purpose, was not entertained, as it contained no allegation that they had been authorised, either by the quarter sessions or the committee, to sign it.[10] The directors of a shipping company have been heard, upon their petition, without any

[1] Smethurst, App. 174.
[2] Minutes of Committees, 1857, i. p. 141.
[3] Smethurst, App. 97.
[4] Ib. 89.
[5] MS. Minutes of Referees.
[6] Glasgow Municipal Extension Bill, 1879.
[7] 1 Clifford and Rickards, 119; 2 Ib. 321; 3 Ib. 96.
[8] 1 Clifford and Rickards, 117.
[9] Uppingham Water Bill, 1876; 1 Clifford and Rickards, 272.
[10] 2 Ib. 5.

special authority from their company.[1] A landowner has been allowed a hearing upon a petition signed by his agent, who had a general power of attorney for the administration of his estates.[2] But evidence of authority to sign without a power of attorney is insufficient.[3]

When petitions not specific.

It may also be objected that petitions do not distinctly specify the grounds on which the petitioners object to the bill. An objection of this nature may be fatal to the petition; as, for example, if the committee, or referees, determine that the grounds there stated do not amount to an objection to the preamble of the bill.[4] Petitioners have been heard against the preamble of a bill, though the word preamble was not in the prayer of their petition, their intention being clearly shown by the context.[5] And the committee may also direct a more specific statement of objections to be given in, limited to the grounds of objection which had been inaccurately stated, or may refuse such an indulgence to the petitioners.[6] In some cases, the referees have left the relevancy and sufficiency of allegations in a petition for the determination of the committee.[7] In 1858, the office of works and public buildings was refused a hearing against the Victoria Station and Pimlico Railway Bill, as the board had not deposited a petition against the bill, by which the promoters might have been made acquainted with the grounds of opposition.[8] Where two out of three petitioners had withdrawn their opposition to a bill, and the agent for the petition did not appear, but the remaining petitioner appeared before the committee by another agent, whom he had appointed, it was held that he was entitled to be heard.[9]

Names withdrawn from petitions.

Petitions against bills to be printed.

On the 16th February 1865, it was ordered "that on every

[1] 2 Clifford and Rickards, 25.

[2] Glasgow, Bothwell, &c. Railway Bill, 1874; 1 Clifford and Rickards, 72.

[3] 3 Ib. 155.

[4] Suppl. to Votes, 1848, p. 322; 1849, p. 173; 1851, pp. 103. 108, 109, 110. Minutes of Committees, 1857, ii. p. 707; Ib. 1858, i. p. 142.

[5] Minutes of Committees, 1856, i. p. 65.

[6] Devon and Dorset Railway Bill; Suppl. to Votes, 1853, p. 1001.

[7] 1 Clifford and Rickards, 47, 48.

[8] Minutes of Committees, 1858, i. 130.

[9] Ib. 1856, i. p. 50.

private bill to be considered by a committee of this house, all petitions which stand referred to such committee, if not previously withdrawn, be printed at the expense of the petitioners, and copies of such petitions, together with a copy of the bill to be considered, be delivered to each member of the committee on the morning of its first sitting."[1]

When opposed bills to be treated as unopposed.

If no parties appear on the petitions against an opposed bill, or having appeared, withdraw their opposition before the evidence of the promoters is commenced, the committee is required to refer the bill back, with a statement of the facts, to the committee of selection, or, if a railway and canal bill, to the general committee, who deal with it as an unopposed bill. And this order has been held to apply where it was decided, before the evidence of the promoters was commenced, that the petitioner had no right to appear.[2]

When unopposed bills to be treated as opposed.

And, on the other hand, if the chairman of ways and means informs the house that any unopposed bill should, in his opinion, be treated as opposed, it is again referred to the committee of selection, or the general committee, and dealt with accordingly: or an instruction is given to the committee on the group to sit and proceed with the bill.[3] In 1855, the Westminster Land Company Bill was at once added to a group of private bills, by order of the house, without the intervention of the committee of selection; and an instruction was given to the committee on the bill to sit and proceed forthwith.[4]

Order in which bills are considered by the committee.

The committee on each group of bills is to take first into consideration the bill or bills named by the committee of selection, or by the general committee; and is to appoint the day for considering each of the other bills, and on which they will require the parties promoting and opposing to enter appearances; and the committee-clerk is to give at least two clear days' notice of such appointment, in the private bill

[1] 120 Com. J. 69.

[2] Minutes of Committees, 1857, vol. i. 143.

[3] 125 Com. J. 72; 126 Ib. 218.

[4] 110 Ib. 279.

office; and in case the committee shall postpone the consideration of any bill, notice is given of the day to which it is postponed. Before this arrangement was made, in 1849, all the parties concerned in the various bills, comprised in the same group, were required to enter appearances on the first sitting of the committee; and although the bills were wholly unconnected in regard to locality or interest, the parties promoting and opposing one bill were detained, at enormous expense, while other bills were under consideration. It is the usual practice of committees to consider the several bills in a group, according to the order in which they were read a second time; and this practice will not be departed from, unless sufficient grounds be shown for a different arrangement of the business.[1] Copies of the bill as proposed to be submitted to the committee, and signed by the agent, are to be laid before each member, at the *first* meeting of the committee.

Copies of the bills to be laid before members.

Questions decided by majority.

All questions before committees on private bills are decided by a majority of voices, including the voice of the chairman; and whenever the voices are equal, the chairman has a second or casting vote.[2]

Provisions to be inserted in bills.

It is the duty of every committee to take care that the several provisions required by the Standing Orders of the house, to be inserted in private bills, are included in them wherever they are applicable. Some of these provisions relate to private bills generally, and others to particular classes of bills. Of the former are clauses for the safe custody of monies, and audit of accounts in bills authorising the levy of fees, tolls, or other rate or charge; and for defining the level of roads, and otherwise protecting them, when altered by the construction of any public work.

Committees on unopposed bills.

The constitution of committees on unopposed bills has already been described: but a short reference to their functions

[1] Minutes of Committees, 1856, vol. ii. p. 137; Ib. 1857, vol. ii. p. 634.

[2] See Warrington and Altrincham Railway Bill; Suppl. to Votes, 1853, p. 789.

will be convenient in this place, to avoid any interruption in stating such orders of the house as apply equally to both classes of committees. The chairman of ways and means, and one of the two other members of the committee, or a referee, are a quorum; and unless the chairman be of opinion that the bill referred to them should be treated as an opposed bill, they proceed to consider the preamble, and all the provisions of the bill, and take care that they are conformable to the Standing Orders. The chief responsibility is imposed upon the chairman, who, being an officer of the house as well as a member, is entrusted, as already stated, with the special duty of examining, with the assistance of Mr. Speaker's counsel, every private bill, whether opposed or unopposed. A copy of the bill, signed by the agent, as proposed to be submitted to the committee, is ordered to be laid before each member of the committee at their first meeting: and similar copies have already been laid before the chairman and Mr. Speaker's counsel two clear days before such meeting.[1] In some cases the alterations proposed in bills have been so material, that committees have reported that it was desirable that the bills should be withdrawn, and that the parties should be permitted to introduce new bills, embracing the proposed amendments.[2]

Special orders and rules.

Filled-up bill to be delivered.

As there are no opponents of the bill before the committee, the promoters have only to prove the preamble, to the satisfaction of the committee, by the production of the necessary evidence, and by such explanations as may be required of them; and to satisfy the chairman, and the other members, of the propriety of the several provisions; that all the clauses required by the Standing Orders are inserted in the bill; and that such Standing Orders as must be proved before the committee have been complied with. If it should appear

Duties of the committee.

[1] For the other duties of chairman of ways and means, see *supra*, pp. 807 *et seq.*

[2] Wigan and Walsall Improvement Bills, and Manchester Corporation Waterworks Bill, 1848; 98 Com. J. 120; 99 Ib. 411; see also *supra*, p. 809.

that the bill, from its character or other circumstances, ought to be treated as an opposed bill by a more public tribunal, the chairman reports his opinion to the house, and the bill is referred to the committee of selection, or general committee, who deal with the bill accordingly.[1]

Orders relating to all committees on bills, whether opposed or unopposed.

There are various orders of the house which are binding upon all committees on private bills, and others which relate only to particular classes or descriptions of bills. It is proposed to state these in their order; and afterwards to describe the ordinary forms observed in the hearing of parties, their counsel or agents, the settlement of the clauses, and the making of amendments.

Reports from public departments referred.

All reports made under the authority of any public department upon a private bill, on being laid before the house, stand referred to the committee on the bill; and whenever any recommendation has been made in such a report, the committee are required to notice it in their report, and to state their reasons for dissenting, should such recommendation not be agreed to. And orders have been made, directing the Board of Trade to present a report upon the railway and canal bills of the session; and upon the bills for harbours, docks, and navigations;[2] and to report upon certain railway bills only.[3] Latterly, a copy of the report of the Board of Trade, upon all the railway, canal, tramway and water bills of the session, has been ordered to be laid before the house.[4]

Other documents referred.

On the 10th May 1858, a report and correspondence with the office of works and public buildings, were referred to the committee on the Victoria Station and Pimlico Railway Bill; and the committee reported that they had made provision, requiring that the approval of the first commissioner of works should be given to a certain portion of the work.[5] On the

[1] Waterford and Limerick Railway Bill, 1850; South Eastern Railway (3 and 4 shares) Bill; 105 Com. J. 133. 281. Chard Railway Bill; 108 Ib. 587; King's Lynn Gas Bill, 1870; South Essex Reclamation Bill, 1871.

[2] 112 Com. J. 128; 117 Ib. 42.

[3] 122 Ib. 23. 102. 110; 16th May 1873.

[4] 132 Com. J. 4, &c.

[5] 113 Ib. 161. 166.

19th June 1854, the Lords referred an admiralty report to the committee on the York, Newcastle, and Berwick Railway Bill, with an instruction to hear the Board of Admiralty, by their counsel and witnesses, in reference to the bill.[1] The minutes of evidence taken before committees on bills, in former sessions, are frequently referred to committees on bills.[2]

Instructions to committees.

Sometimes also the inquiries of committees on private bills have been extended, by instructions, to subjects of a more general and enlarged character. For example, in 1866, an instruction was given to the committee on the London (City) Corporation Gas Bill, to inquire into the Metropolis Gas Act, 1860.[3] In the same year, an instruction was given to the committee on the London (City) Traffic Regulation Bill, to inquire into the best means of regulating the traffic of the metropolis;[4] and in 1867, the committee on the East London Water (Thames Supply) Bill, were instructed to inquire into the Metropolis Water Act, 1852.[5] In 1878, an instruction was given to the committee on the Manchester Corporation Water Bill, to consider the requirements of other populations between Manchester and the Lake district.[6]

Names of members entered in minutes.

The names of the members attending each committee are entered by the committee clerk in the minutes; and when a division takes place, the clerk takes down the names of the members, distinguishing on which side of the question they respectively vote; and such lists are to be given in, with the report, to the house.

What Standing Orders to be inquired into.

The committee are precluded from examining into the compliance with such Standing Orders as are directed to be proved before the examiners, unless by special order from the house.[7] Such an order is only given when the house, on the report of the Standing Orders Committee, allow parties

[1] 86 Lords' J. 256.

[2] 112 Com. J. 156. 173. 205. 235; 122 Ib. 221.

[3] 121 Ib. 136.

[4] Ib. 106.

[5] 122 Ib. 65.

[6] 133 Ib. 68.

[7] See Minutes of Committee on Belfast and West of Ireland Railway Bill; Suppl. to Votes, 1854, p. 506; Belfast and County Down Railway Bill; Ib. p. 581.

to proceed with their bill, on complying with certain Standing Orders which they had previously neglected. In ordinary cases it has been customary for the committee on the bill to inquire whether the orders of the house have been complied with, instead of referring that matter to the examiner: but when any special inquiry in reference to the Standing Orders has been necessary, the matter has been referred to the examiner instead of to the committee;[1] and his certificate has been produced before the committee.[2]

Proof of compliance by affidavit.

Compliance with such orders may be proved before the committee, by affidavits sworn in the same manner as affidavits produced before the examiners.[3] The committee may also admit proof of the consents of parties concerned in interest in any private bill, by affidavits sworn in the same manner, or by the certificate in writing of such parties, whose signatures are to be proved by one or more witnesses, unless the committee require further evidence.

Clause compelling payment of subscription.

In all bills for carrying on any work by means of a company, commissioners or trustees, provision is required to be made for compelling subscribers to make payment of the sums severally subscribed by them.[4]

Railway bills.

Railway bills have been the most important class of private bills in modern times, and there are numerous Standing Orders applicable to them, to which the particular attention of the committee on every railway bill, and of the promoters and opponents of such bills, should be directed. By these Standing Orders, 1, particular matters for the investigation of the committee are pointed out; 2, certain fixed principles of legislation are laid down, from which the committee, except in special cases, will not be justified in departing; and 3, particular clauses are required to be inserted.

Special reports.

1. Whether the bill be opposed or unopposed, the promoters, in proving the preamble of a railway bill, must be

[1] Dublin Improvement, and Great Northern Railway Bills, 1849; 104 Com. J. 76. 81.

[2] Ib. 84.

[3] See *supra*, p. 775.

[4] Standing Order, No. 144.

prepared with sufficient evidence to satisfy the committee, and enable them to report to the house the matters specially referred to their consideration.

Matters to be specially reported.

The committee are to report specially whether any report from any public department has been referred to the committee, and if so, in what manner its recommendations have been dealt with by the committee; and whether the railway is intended to cross on a level any railway, turnpike road, or highway. The committee are also to report any other circumstances which, in their opinion, the house should be informed of.

When the Standing Orders do not apply.

Some of these orders for a special report are often inapplicable; and, in such cases, the committee state in their report their reasons for considering that any of them do not apply to the bill, and report upon the others. All such reports should be carefully prepared by the promoters of the bill, and submitted for the approval of the committee, before the conclusion of their sittings.

Restrictions on loans.

2. The principles of legislation to be observed by the committee on a railway bill are as follow. No company is to be authorised to raise, by loan or mortgage, a larger sum than one-third of its capital; and until fifty per cent. on the whole of the capital has been paid up, the company is not to raise any money by loan or mortgage.

Ascent of roads.

Where the level of any road is to be altered in making a railway, the ascent of a turnpike road is not to be more than one foot in thirty; and of any other public carriage road not more than one in twenty; unless a report from an officer of the Board of Trade shall be laid before the committee, and unless the committee, after considering such report, and examining the officer, if they disagree with his report, shall recommend steeper ascents, with the reasons and facts upon which their opinion is founded.

Fence to bridges.

A sufficient fence of four feet, at least, is to be made on each side of every bridge which shall be erected.

Level crossings.

No railway is to be made across any railway, turnpike road, or other public carriage road on the level, unless the report of some officer of the Board of Trade shall be laid before the committee, and unless the committee, after con-

sidering such report, and examining the officer, if they disagree with his report, shall recommend such level crossing, with the reasons and facts upon which their opinion is founded; and in every clause authorising a level crossing, the number of lines of rails is to be specified.

Acquiring docks, piers, &c.

No railway company is to be authorised to construct or enlarge, purchase or take on lease, or otherwise appropriate any dock, pier, harbour, or ferry, or to acquire and use any steam vessels for the conveyance of goods and passengers, or to apply any portion of their capital or revenue to other objects, distinct from the undertaking of a railway company, unless the committee report that such restrictions ought not to be enforced, with the reasons and facts upon which their opinion is founded; and where a committee has failed to report specifically such reasons and facts, the bills have been re-committed for that purpose.[1]

Steam-vessels.

No powers of purchasing, hiring, or providing steam-vessels are to be contained in a railway bill, by which other powers are sought, except when the transit of such steam-vessels is required to connect portions of railway belonging to, or proposed to be constructed by, such company.

Committee to fix tolls and charges.

The committee are to fix the tolls and determine the maximum rates of charge, for the conveyance of goods and passengers; or are to make a special report, with their report of the bill, explanatory of the grounds of their omitting to determine such maximum.

Increase of rates, &c.

By Standing Order, 12th March 1883, in case of any bill relating to a railway, tramway, canal, dock, harbour, navigation, pier or port, seeking powers as to tolls, rates or duties in excess of those already authorised, the committee are to report specially in regard to the recommendations and observations of the Board of Trade. And in furtherance of the objects of this Standing Order, bills have been recommitted.[2]

[1] Great Eastern and North British Railway Bills, 16th July 1863; Caledonian Railway (Edinburgh Station) Bill, 1866.

[2] Exeter, Teign Valley and Chagford Railway; Windsor, Ascot and Aldershot Railway, 24th May 1883.

In 1882 the general committee on railway and canal bills also recommended the insertion of clauses regulating tables of rates on goods.

Preference dividends not to be altered.

No railway company is to be authorised to alter the terms of any preference or priority of interest or dividend unless the committee report that such alteration ought to be allowed, with the reasons on which their opinion is founded, together with the number of preference shareholders who have assented to or dissented from such alteration.[1]

Matters to be proved before Board of Trade.

No powers of purchase, sale, lease, or amalgamation are to be given to railway companies, unless previously to the application to Parliament, certain matters connected with the capital of such companies, be proved to the satisfaction of the Board of Trade. And it has been held that application is made to Parliament by presenting the petition for the bill to the house, and not by depositing it in the private bill office, or proving compliance with the Standing Orders.

When application is construed to be made to Parliament.

Company not to guarantee dividend until completion of lines.

No railway company is to be authorised, except for the execution of its original lines sanctioned by Parliament, to guarantee interest on any shares which it may issue for creating additional capital, or to guarantee any rent or dividend to any other railway company, until such first-mentioned company has completed and opened for traffic its original lines. In bills for the amalgamation of railway companies, the amount of capital created by such amalgamation is, in no case, to exceed the sum of the capitals of the companies so amalgamated.

Limitation of capital on amalgamation.

Additional capital for purchasing a railway.

In bills for empowering a railway company to purchase any other railway, no addition is to be made to the capital of the purchasing company, beyond the capital of the railway purchased; and in case such railway is to be purchased at a premium, no addition, on account of such premium, is to be made to the capital of the purchasing company.

Tramway bills.

No powers are to be given to any municipal corporation, local board, improvement commissioners, or other local

[1] See also *infra*, p. 850.

authority, to place or run carriages upon any tramway, and to demand and take tolls and charges in respect of the use of such carriages.

Police and sanitary regulations.

In the case of bills promoted by local authorities, the committee is to consider the various powers relating to police and sanitary regulations in conflict with, deviation from, or excess of the general law, and the report of the committee thereupon is to be printed and circulated with the votes.

Duty of committee as regards these provisions.

It is the duty of the committee to take care that the provisions of the bill are in conformity with these principles and regulations; but no special form of enactment is prescribed for carrying the intentions of Parliament into effect. Some of these orders are not obligatory upon the committee, provided they report to the house their reasons for not enforcing them in any particular case. In other cases the house has not entrusted the committee with discretionary powers: but committees have occasionally exercised a discretion, subject to the approval of the house, and have made special reports.[1]

Clause protecting existing preference shares.

3. There are also special clauses which are to be inserted in every railway bill to which they are applicable. Where it is proposed to authorise the company to grant any preference or priority in the payment of interest or dividends on any shares or stock, a clause is required to be inserted, providing that the granting of such preference shall not prejudice or affect any preference, or priority in the payment of interest or dividends, on any other shares or stock already lawfully subsisting; unless the committee report that such provision ought not to be required, with the reasons on which their opinion is founded.[2]

[1] York and North Midland Railway, 1850, Suppl. to Votes, p. 59; Eastern Union Railway, 1850, Ib. p. 113; Manchester, Sheffield and Lincolnshire Railway Bill, 1850, Ib. p. 151.

[2] For cases in which such reasons have been given, see Eastern Counties Railway Bill, Suppl. to Votes, 1853, p. 158; Monkland Railways Bill, Ib. 193; Great Northern Railway (No. 1) Bill, Ib. 231; North British Railway Bill, Ib. 287; Aberdeen Railway Bill, Ib. 289; Great Western (Henley, &c.) Bill, Ib. 371; Carlisle Railway Bill, Ib. 515; York, Newcastle and Berwick, &c. Bill, Ib. 585, &c.; South Eastern Railway (Lewis-

Clause imposing penalty until line be opened.

In every railway or tramway bill providing for the construction of a new railway or tramway, or for the extension of time for the completion of a railway or tramway, the following provisions, founded upon the recommendation of a joint committee of Lords and Commons in 1867, are to be inserted. If promoted by an existing company having a railway or tramway already opened for public traffic, a clause is to be inserted, providing that if the company fail to complete the line within the time limited by the Act, the company shall be liable to a penalty of 50*l.* a day, until the line has been completed, and opened for public traffic, or until such penalty amounts to five per cent. on the estimated cost of the works. If promoted by an existing railway or tramway company, not having a railway or tramway already opened for public traffic, or which during the last year has not paid dividends upon its ordinary share capital, or by an existing railway or tramway company where an increase of capital is sought, or by persons not incorporated, a clause is to be inserted, providing that the deposits paid under the Standing Orders shall be retained, and made liable to forfeiture unless, before the time limited for completing the line, the company shall either open it for the public conveyance of passengers, or prove that they have paid up, and expended, one-half of their capital for the purposes of the Act. Another clause is required to be inserted, providing that the penalties recovered, or deposits forfeited, shall be applied to the compensation of landowners or other persons whose property may have been interfered with, or affected.

Bond to be entered into for completion of line.

Time for completing line.

A clause is to be inserted providing that the railway or tramway in the case of a new line, is to be completed within five years, and in the case of an extension of time, within three years.

Other provision for

Where these provisions are not applicable to any particular

ham and Bromley) Bill, Suppl. to Votes, 1854, p. 92; Great Western (Shrewsbury and Birmingham, &c.) Bill, Ib. p. 299; York, Newcastle and Berwick, &c. Bill, Ib. p. 387; Leeds Northern Railway Bill, Ib. p. 457.

completion of line.

bill, the committee are to make such other provision as they shall deem necessary for ensuring the completion of the line of railway or tramway.

Interest or dividend not to be paid on calls.

By Standing Order, No. 167, a clause is to be inserted in every railway bill, prohibiting the payment of interest or dividend to any shareholder in respect of calls, except under certain conditions. But on the 6th June 1883, this Standing Order was amended, and a considerable relaxation of the conditions, attached to the payment of interest, was sanctioned.

Deposits not to be paid out of capital.

And another clause is to be inserted, prohibiting a railway company from paying, out of the capital which they have been authorised to raise for the purposes of an existing Act, the deposits required by the Standing Orders to be made for the purposes of any application to Parliament for a bill for the construction of another railway. And, lastly, a clause is to be inserted providing that the railway shall not be exempted from the provisions of any general Acts, or from any future revision and alteration, under the authority of Parliament, of the maximum rates of fares and charges previously authorised.

Railway not to be exempt from general acts.

Length of line.

In every railway and tramway bill the length of the line is to be set forth in miles, furlongs, chains, and yards, or decimals of a chain, in the clause describing the works, with a statement, in the case of each tramway, whether it is a single or a double line.

Enforcement of pledges.

A committee has inserted clauses compelling a railway company, under penalty of a suspension of its dividends, to apply to Parliament in the next session, for a bill to authorise the construction of a line of railway, which the company had pledged itself to make.[1] And the preamble of a bill has been negatived, on proof that it was a violation of a pledge previously given by a company.[2]

[1] South Western Railway (Capital and Works) Act, 1855, 18 & 19 Vict. c. clxxxviii, ss. 62. 69; Suppl. to Votes, 1853, p. 945; Ib. 1855, p. 251.

[2] Mid-Sussex and Midhurst Junction Railway Bill, Group 3, 1860.

Where any agreement is to be sanctioned, such agreement is to be printed as a schedule to the bill. Agreement to be annexed to bill.

In the case of bills authorising a local authority to borrow money, under the Local Government Acts, without the sanction of the local government board, estimates of the proposed application of the money are to be recited in the bill, and proved before the committee. Local government.

Whenever application is made by a local authority in Ireland for new powers, the promoters are required to obtain a certificate, under the seal of the local government board in Ireland, whether such application is made with their sanction and approval, which certificate is to be reported upon by the committee. Local government (Ireland).

The committee on a bill for confirming letters patent are to see, in compliance with the Standing Orders, "that there be a true copy of the letters patent annexed to the bill." This copy should be attached to the bill when first brought into the house; and if its omission were noticed in the house, at any time before the bill was in committee, the bill might be ordered to be withdrawn. Letters patent bills.

There are several Standing Orders relating specially to bills for the inclosure and drainage of lands, compliance with which is to be examined, and enforced by the committee on the bill. These are relative to the proof of notices, and of the allegations in the preamble of the bill; the consent bill, signed by the lord of the manor and the owners of property; a statement of the property of owners, assenting, dissenting, and neuter; and the names, qualifications, and pay of the commissioners. On a report from the committee that the lord of the manor had declined to sign the bill, but did not oppose it, and desired to remain neuter, the part of the order relating to the consent of the lord of the manor has been dispensed with.[1] Inclosure and drainage bills.

In the case of drainage bills, the assents of the occupiers as well as owners of land are to be proved, but not that of the lord of the manor. Drainage bills.

[1] Thetford Inclosure, 1st April 1844; 99 Com. J. 182.

Inclosure bills.

It is ordered that in every bill for inclosing lands, provision be made for leaving an open space sufficient for purposes of exercise and recreation of the neighbouring population, and for its fencing and maintenance.

Clause for leaving open space for exercise and recreation.

When a provisional order might be sought.

Whenever a private bill contains any provisions relating to the inclosure of land, which might be comprised in a provisional order, under the Acts for the inclosure and improvement of land, the committee are to make a special report to the house.

Houses of the labouring classes.

In every bill by which power is sought to take, in any city, town or parish, fifteen houses or more, occupied wholly or partially, as tenants or lodgers, by persons belonging to the labouring classes, clauses are to be inserted for giving notice of the intention of taking such houses, and requiring the parties to provide sufficient accommodation for the persons to be displaced; and the committee are to report specially whether the latter clause has been inserted, and if not, the grounds upon which the committee have decided it to be inapplicable.

Turnpike roads (Ireland).

The committee on a turnpike road bill relating to Ireland are to insert a clause providing for the qualification of commissioners.

Limits of burial ground or gasworks to be defined.

In every bill for making a burial ground or cemetery, or the erection of gas works, there is to be a clause defining the limits within which the same are to be erected or made.

Gas bills.

In every bill in which an existing gas company is authorised to raise additional capital, provision is to be made for the offer of such capital by auction, or tender, unless the committee report that such provision ought not to be required, with their reasons; and it is competent to the committee so to regulate the price of gas, that any reduction of the authorised standard price shall entitle the company to make a proportionate increase of dividend, and that any increase above the standard price shall involve a proportionate decrease of dividend.

General proceedings of committees on opposed bills.

Having adverted to the several orders which are to be observed by committees, in reference to the proof of com-

pliance with the Standing Orders, and the peculiar provisions required to be inserted in particular bills, the general proceedings of committees upon opposed private bills may be briefly explained. These are partly regulated by the usage of Parliament, partly by Standing Orders, and partly by statute.

Witnesses examined upon oath.

It may be mentioned, in the first place, that as regards the inquiries of these committees, an important amendment of the law has recently been introduced. By the Act 21 & 22 Vict. c. 78, committees upon private bills were first empowered to administer oaths. The 34 & 35 Vict. c. 33, gave the same powers to committees upon bills for confirming provisional orders. But these provisions have since been superseded by the Parliamentary Witnesses Oaths Act, 1871, which empowered every committee of the House of Commons to administer an oath to witnesses examined before it.[1]

Minutes of evidence to be printed.

On the 16th February 1864, the house resolved "That the minutes of evidence on opposed private bills be printed at the expense of the parties, whenever copies of the same shall be required." And in the case of "hybrid" bills, to which this order does not extend, special orders are given that the parties have leave to print the minutes of evidence day by day, from the committee clerk's copy, if they think fit.[2]

Room, when open.

When counsel are addressing the committee, or while witnesses are under examination, the committee-room is an open court; but when the committee are about to deliberate, all the counsel, agents, witnesses, and strangers are ordered to withdraw, and the committee sit with closed doors. When they have decided any question, the doors are again opened, and the chairman acquaints the parties with the determination of the committee, if it concern them.

Cleared.

Parties appear before the committee.

The first proceeding of a committee on an opposed bill,

[1] The Parliamentary Witnesses Oaths Act, 1871, repeals s. 1 of 21 & 22 Vict. c. 78, and s. 3 of 34 & 35 Vict. c. 3.

[2] 122 Com. J. 158. 168. 413.

when duly constituted, is to call in all the parties. The counsel in support of the bill appear before the committee: the petitions against the bill in which the petitioners pray to be heard, are read by the committee clerk: appearances are entered upon each petition with which the parties intend to proceed, and the counsel or agents appear in support of them.[1] And it was usual, at this time, until cases of *locus standi* were heard by the court of referees,[2] to intimate that objections would be raised to the hearing of petitioners.[3] If no parties, counsel, or agents appear when a petition is read, the opposition on the part of the petitioners is held to be abandoned; and if parties have neglected to enter their appearance at the proper time, they will not be entitled to be heard.[4] In some special cases, however, indulgence has been granted to them.[5] In one case, the agent who had deposited a petition stated that there was no appearance upon it: but another agent immediately entered an appearance; and as it was shown that he had regularly obtained the appearance paper from the Private Bill Office, on the production of a letter from the secretary to the company, written by order of the board of directors, stating that they desired to change their agent, and authorising him to prosecute their petition, the committee allowed the petitioners to be heard.[6] An appearance paper has been allowed to be amended, where it stated that a petition praying to be heard against the preamble, related to clauses only.[7] Where petitions com-

When there is no appearance.

[1] By a Standing Order, 3rd Jan. 1701, it was ordered, "That it be an instruction to the committee of privileges and elections, that they do admit only two counsel of a side, in any cause before them." 13 Com. J. 648. This order has been understood to apply to all committees (62 Hans. Deb. 3rd Ser. p. 311); but, by its words, it would appear to be limited to a committee which is no longer in existence, and in practice it is certainly not observed.

[2] See *supra*, p. 817.

[3] Suppl. to Votes, 1845, p. 1538; Ib. 1854, p. 430, &c.

[4] Ib. 1849, pp. 204. 288. South Wales Railway Bill, Suppl. to Votes, 1853, p. 829. Minutes of Committees, 1857, vol. ii. p. 793; and *supra*, pp. 781. 814. Minutes of Group 2, 1860.

[5] Minutes of Groups 3 and 8, 1860; Group 3, 1862.

[6] Ib. Group 9, 1863.

[7] Ib. Group 3, 1859.

plain of matters arising during the sitting of the committee, or of amendments proposed to be made in the bill, appearances are allowed to be entered, as the occasion arises.[1]

Hearing of solicitors.

Difficulties have sometimes arisen, when counsel have not been retained, or are absent, in regard to the right of solicitors to be heard as agents for the parties, unless they have been entered as agents for the bill or petition, in the Private Bill Office. In 1844, a solicitor was refused a hearing as an agent before one of the sub-committees on petitions for private bills, and it was ruled that such refusal was justified by practice, and by the construction of the Standing Order;[2] and this rule has since been followed by the examiners. Before committees on private bills, however, solicitors have often been heard without objection,[3] where it has been for the convenience of the parties; but in the Mersey Conservancy and Docks Bill, 1857, a solicitor, whose name was specified in the appearance as solicitor for a petition, on claiming to be heard, received an intimation from the committee, that he would not be entitled to address the committee until he had entered himself as a parliamentary agent.[4] The Speaker, therefore, authorised the clerks in the Private Bill Office to enter his name as agent for the petition, in addition to that of the agent who had originally taken out the appearance: the latter being still responsible for the payment of the fees, and for the observance of the rules and orders of the house. And the same rules have since been observed by the referees.[5]

Case opened.

In the case of a committee on a group of bills, as already stated, the committee take the bill or bills first into consideration, which have been named by the committee of selection, or general committee; and unless a bill comprised in the group be set down for the first day, the promoters and opponents are not to enter their appearance on that day in respect of such bill.

Proof of preamble.

When the parties are before the committee, the senior

[1] Minutes of Group 4, 1859; Group C. 1861.

[2] 73 Hans. Deb. 3rd Ser. 583.

[3] Minutes of Committees, 1857, vol. ii. pp. 645. 647, &c.

[4] Ib. p. 28.

[5] See also *supra*, p. 814.

counsel for the bill opens the case for the promoters; unless preliminary objections should be raised by petitioners to proceeding further with the bill.[1] Unlike the practice in regard to public bills, the preamble of a private bill is first considered; and if the preamble be opposed, the counsel addresses the committee more particularly upon the general expediency of the bill, and then calls witnesses to prove every matter which will establish the truth of the allegations contained in the preamble. In a railway bill, this is the proper occasion for producing evidence to satisfy the committee upon the most material of the points which, by the Standing Orders, they are obliged to report to the house.[2] The witnesses may be cross-examined by the counsel who appear in support of the several petitions against the preamble,[3] but not, as to the general case, by the counsel of parties who object only to certain provisions in the bill. Cross-examination is confined to matters comprised in the petitions, except when it is sought to discredit a witness. After the cross-examination, each witness may be re-examined by the counsel in support of the bill. When all the witnesses in support of the preamble have been examined, the case for the promoters is closed, unless the right to an opening speech have been waived by the counsel for the bill.

When petitioners entitled to be heard.

Every petition against a private bill, which has been deposited not later than ten clear days after the first reading, and every petition against a provisional order bill, deposited not later than seven days after the report of the examiner on such bill, or otherwise deposited in accordance with the Standing Orders, and in which the petitioners pray to be heard by themselves, their counsel, or agents, stands referred to the committee; and such petitioners, subject to the rules and

[1] London and North-Western Railway Bill, 1873; Birmingham Corporation Water Bill, 1875; Stockton and Middlesborough Corporation Water Bill, 1876; Brighton and Hove Gas Bill, 1881; Tramways Provisional Order (Birmingham) Bill, 1881, &c.

[2] See *supra*, p. 844. The formal matters required to be reported, are generally proved at a later period.

[3] Suppl. to Votes, 1852, pp. 150, 151. 188, 189, &c.

orders of the house, shall be heard upon their petition, if they think fit, and counsel heard, in favour of the bill, against the petition. The petitioners are required to establish before the referees a *locus standi* according to the rules and usage of Parliament.[1]

Proceedings on preamble.

When counsel are allowed to be heard against the preamble, one of them either opens the case of the petitioners, or reserves his speech until after the evidence. Witnesses may be called and examined in support of the petitions, cross-examined by the counsel for the bill, and re-examined by the counsel for the petitioners: but counsel can only be heard, and witnesses examined, on behalf of petitioners, in relation to matters referred to in their petitions.[2] It has been ruled that where a petitioner against a railway bill is admitted to be heard on a petition alleging a preferable line, described particularly in his petition, the engineer to be called in support of such line is entitled to produce, prove, and refer to plans and sections of the suggested line, as made by himself.[3] But, of late years, it has not been usual to admit evidence of alternative schemes, unless they have been submitted to Parliament.[4] As a general rule, each witness is to be examined, or cross-examined, throughout, by the same counsel. In the Shrewsbury and Birmingham Railway Bill, 1852, the committee resolved that "they must adhere to the rule that the same counsel should go through with the examination of each witness, unless by agreement between the parties, to be approved by the committee, it should be arranged otherwise, in order to meet the convenience of counsel."[5] Committees have also resolved that no counsel should be permitted to

[1] See *supra*, p. 817.

[2] Glasgow and South Western Railway Bill, Suppl. to Votes, 1853, p. 720; South Wales Railway Bill, Ib. p. 1339. Minutes of Committees, 1856, vol. i. p. 56.

[3] Midland Railway (Extension to Otley) Bill; Cork and Macroom, &c. Bill, 1861; Resolutions of general committee of railway and canal bills, 1861; 117 Com. J. 267, &c.

[4] Harrow and Rickmansworth Railway Bill, 1874; West Kent Drainage Bill, 1875; Sutton Bridge Docks Bill, 1875; Newport (Monmouthshire) Gas Bill, 1875; Provisional Order (Thirsk Water) Bill, 1879, &c.

[5] Suppl. to Votes, 1852, p. 287.

cross-examine witnesses, who had not been present during the examination in chief, nor to re-examine unless he had been present during the entire cross-examination.[1] When the evidence against the preamble is concluded, the case of the petitioners is closed, unless an opening speech have been waived; and the senior counsel for the bill replies on the whole case.[2] If the petitioners do not examine witnesses, the counsel for the bill has no right to a reply; but in some special cases, where new matters have been introduced by the opposing counsel (as, for example, Acts of Parliament, precedents, or documents not previously noticed[3]) a reply, strictly confined to such matters, has been permitted. Where there are numerous parties appearing on separate interests, the committee will make such arrangements as they think fit, for hearing the different counsel.[4] Sometimes the minutes of evidence on bills of a previous session, and other documents, are referred to a committee,[5] and may be commented upon by counsel, and considered by the committee.

Question upon preamble.

When the arguments and evidence upon the preamble have been heard, the room is cleared, and a question is put, "That the preamble has been proved," which is resolved in the affirmative or negative, as the case may be. Or, where there are competing bills in the same group, the decision of the committee upon the preamble of the first bill is usually postponed until after they have heard the evidence in support of the other bills. In some cases the committee have resolved that the clauses which the promoters had agreed with the opponents to insert in the bill, should be produced before

[1] Suppl. to Votes, 1847, vol. ii. pp. 1457. 1477; Minutes of Proceedings, 1861, p. 84; Resolutions of general committee of railway and canal bills, 1861.

[2] In the Edinburgh, Perth and Dundee Railway Bill, the committee held that the counsel for the bill was not entitled to a general reply; but that his reply must be confined to the case of the only petitioner who had adduced evidence; Suppl. to Votes, 1853, p. 720.

[3] Great Western Railway, &c. Bill, Suppl. to Votes, 1854, p. 495.

[4] Suppl. to Votes, 1852, p. 288. In the Severn Valley, &c. Group, the committee decided to hear two counsel only on the whole case presented by several bills; Ib. 1853, p. 1031.

[5] 108 Com. J. 495. 514; 117 Ib. 267; 122 Ib. 218; 132 Ib. 83, &c.

Clauses considered.

they proceeded to decide on the preamble.[1] If the preamble be proved, the committee call in the parties, acquaint them with the decision, and then go through the bill clause by clause, and fill up the blanks; and when petitions have been presented against a clause, or proposing amendments, the parties are heard in support of their objections or amendments, as they arise. Clauses may be postponed and considered at a later period in the proceedings, if the committee think fit. When all the clauses of the bill have been agreed upon, new clauses may be offered, either by members of the committee, or by the parties. It is at this time also that officers of public departments sometimes appear, to secure the insertion of clauses protective of the property or interests of the Crown, or of navigations, and tidal lands, or otherwise concerning the public interests. On the 25th May 1865, the Admiralty were allowed to attend by counsel at the next sitting of the South Eastern Railway Bill, to protect the Greenwich Observatory from injury. In 1872, the Treasury obtained the insertion of a clause in the International Communication Bill, providing access to Crown property. But, except in cases in which the consent of the Crown may be withheld from a bill, government departments are without any means of enforcing the adoption of their clauses, either by the parties or the committee; and their relations to the committee and Parliament are often not a little anomalous. It has, indeed, been determined that public boards have no right to be heard, except upon petition.[2]

What clauses admissible.

It must be borne in mind, that the committee may not admit clauses or amendments which are not within the order of leave; or which are not authorised by a previous compliance with the Standing Orders applicable to them, unless the parties have

[1] North Metropolitan Railway Bill, Suppl. to Votes, 1854, p. 451.

[2] Victoria Station and Pimlico Railway Bill, Group 6, 1858. In 1873, the Postmaster General petitioned against the Midland Railway Bill: but the petition was afterwards withdrawn. In the same year he also petitioned against the Deal, Walmer and Adisham Railway Bill, the South Eastern Railway Bill, the North Metropolitan Tramways Bill, and the London and Aylesbury Railway Bill; and in the two first cases, appearances were entered.

received permission from the house to introduce certain provisions, in compliance with petitions for additional provision. But if the committee are of opinion that such provisions should be inserted, the further consideration of the bill can be postponed, in order to give the parties time to petition the house for additional provision.[1] A committee has refused to entertain a clause giving powers to another company practically to annul the provisions of a bill, even when it appeared that the petition of that company had been withdrawn, on condition of the introduction of that clause. At the same time the committee offered to obtain power from the house to hear the company, notwithstanding the withdrawal of their petition.[2] Instructions of a restrictive character are sometimes given, which are carried out by the committee. Thus, on the 14th April 1851, an instruction was given to the committee on the East Lancashire Railway Bill, "to strike out of the said bill all powers of interference with other companies, and restrict the promoters to the remaining objects of the bill."[3] Sometimes the committee, pursuant to instructions, agree to divide the bill into two or more bills, in which case each bill is gone through separately, and amended.[4] And in other cases, also pursuant to instructions, the committee unite or consolidate two bills into one.[5]

Preamble not proved.

If the proof of the preamble be negatived, the committee report to the house, "That the preamble has not been proved to their satisfaction." In 1836, the committee on the Durham (South West) Railway Bill, were ordered to re-assemble, "for the purpose of reporting specially the preamble, and the evidence and reasons, in detail, on which they came to the resolution that the preamble had not been proved."[6] It has been ruled that when a committee have resolved that the preamble of a private bill has not been proved, and ordered

[1] London and North Western (Northampton Branch) Bill; Suppl. to Votes, 1853, p. 964; Ib. p. 1255.

[2] Thames Tunnel Railway Bill, Minutes of Group 2, 1860.

[3] 106 Com. J. 165.

[4] Portsmouth Railway Bill; Suppl. to Votes, 1854, p. 181.

[5] 110 Com. J. 188. 201; Suppl. to Votes, 1848, p. 337; Ib. 1849, p. 98; Ib. 1851, p. 111; Ib. 1855, p. 353.

[6] 91 Com. J. 396.

the chairman to report, it is not competent for them to reconsider and reverse their decision: but that the bill should be re-committed for that purpose.[1] In 1854, the preambles of two out of three competing railway bills were declared not proved: but the successful bill, after it was reported, having been withdrawn, the two other bills were re-committed, and the preamble of one of them was declared to be proved.[2] In 1861, in the case of the Mold and Denbigh Junction Railway Bill, the committee reported that the preamble had not been proved: but all opposition having been subsequently withdrawn, the bill was re-committed to the former committee, who reported the preamble proved, and the bill was passed.[3] In 1874, in the case of the Bolton-le-Sands, Warton and Silverdale Reclamation Bill, the committee having reported that the preamble had not been proved, the bill was afterwards re-committed to the former committee, with an instruction to the committee to strike out of the bill all powers for the compulsory taking of lands, to which any opposition is offered.[4] And in several other cases, where compromises have afterwards been effected, and the promoters have consented to make amendments, the bills have been re-committed for that purpose.[5]

In the Kingstown Township Bill, 1873, while the case for the promoters was proceeding, it was made known that the town commissioners of Kingstown, by whom the bill was promoted, had been restrained by injunction from proceeding further with the bill, on the ground that they had failed to comply with the requirements of the Towns Improvement Act, 1847 (ss. 132, 133 and 142), and were not therefore entitled to come to Parliament. The commissioners, however, had also signed the petition for the bill, as individuals; and claimed to proceed with the bill in that capacity: but the committee resolved "That the counsel for the promoters

[1] Group P. 1853, Suppl. to Votes, p. 957; Shrewsbury and Welchpool Railway Bill, 1858.

[2] Group 1, Suppl. to Votes, 1854, pp. 175. 415.

[3] 116 Com. J. 285.

[4] 129 Ib. 174.

[5] Ib. 225; 132 Ib. 177.

having stated that the commissioners had withdrawn from the promotion of the bill, the committee decided that they ought not to proceed further with the bill, and that they would report to the house that the preamble had not been proved." This decision was founded, it is believed, upon the determination of the committee not to favour any evasion of the Towns Improvement Act, and of the injunction founded upon it.[1] Attempts were afterwards made, without success, to obtain a re-hearing, but the committee adhered to their determination.

Alterations in preamble.

Alterations may be made in the preamble, subject to the same restriction as in the case of other amendments, that nothing be introduced inconsistent with the order of leave, or with the Standing Orders of the house applicable to the bill.[2] Such amendments, however, are to be specially reported.[3]

Costs awarded in certain cases.

In 1865, the important principle of restraining vexatious litigation by awarding costs was first introduced. By 28 & 29 Vict. c. 27, when a committee on a private bill shall decide that the preamble is not proved, or shall insert any provision for the protection of a petitioner, or strike out or alter any provision for the protection of such petitioner, and further unanimously report that petitioners have been unreasonably or vexatiously subjected to expense in defending their rights, they shall be entitled to recover costs from the promoters. And, on the other hand, when the committee shall unanimously report that the promoters have been vexatiously subjected to expense by the opposition of petitioners, they shall be entitled to recover costs from those opponents. But it is provided that no landowner who *bonâ fide*, at his own sole risk and charge, opposes a bill which proposes to take any part of his property, shall be liable to any costs in respect of his opposition. Since the passing of this Act such costs have been awarded in several cases.[4] In

[1] Minutes of the Committee.

[2] See Report on Revision of Standing Orders, 1843, p. iii.

[3] 113 Com. J. 166. 180, &c.

[4] London, Chatham and Dover (Various Powers) Bill, 1866; North British Railway (Coatbridge, &c. Branches) Bill, 1866; Great Western Railway Bill, 1866; Brecon and Merthyr Tydvil Junction Railway Bill,

all such cases the costs are to be taxed by the taxing officer of the House of Commons. In one case, the promoters having informed the committee that it was not their intention to proceed with the bill, a petitioner applied to the committee to report that the promoters not having adduced evidence, the preamble was not proved, and to consider an application for costs. But the committee decided to report that the parties had stated that it was not their intention to proceed with the bill, and that consequently the question of costs could not be entertained.[1] And this construction of the act has since been followed.[2] The same principle has also been generally applied, where the promoters have already amended the bill to meet the objections of petitioners,[3] or have not appeared in support of a provisional order.[4] By the 34 & 35 Vict. c. 3, select committees upon bills for confirming, or giving effect to, provisional orders, may award costs in like manner, and under the same conditions, as in the case of a private bill.

There are particular duties of the chairman and of the committee on a private bill, in recording the proceedings of the committee, and reporting them to the house, which remain to be noticed. These are distinctly explained in the Standing Orders, and are as follow:

Plan, &c. to be signed by chairman.

"Every plan and book of reference thereto which shall be produced in evidence before the committee upon any private bill (whether the same shall have been previously lodged in the private bill office or not), shall be signed by the chairman of such committee with his name at length; and he shall also mark with the initials of his name

1867; Hull Docks Bill, 1867; Tivy Side Railway Bill, 1872; North Eastern Railway (Additional Powers) Bill, 1874; Local Government Board Provisional Orders (Dawlish) Bill, 1877; Rusholme Local Board Tramways (Provisional Orders) Bill, 1878; Metropolitan Railway Bill, 1881; North British Railway (General Powers) Bill, 1881; Swindon, Marlborough and Andover Railway Bill, 1883.

[1] Abbotsbury Railway Bill (Group 3), 1873.

[2] South Kensington Market Bill, 1883 (Group 8).

[3] North Staffordshire Railway Bill, 1879; Swindon, Marlborough and Andover Railway Bill, 1883.

[4] Pier and Harbour Provisional Orders (Weymouth) Bill, 1880.

every alteration of such plan and book of reference which shall be agreed upon by the said committee; and every such plan and book of reference shall thereafter be deposited in the private bill office."

Committee bill and clauses to be signed by chairman.

"The chairman of the committee shall sign, with his name at length, a printed copy of the bill (to be called the committee bill), on which the amendments are to be fairly written; and also sign, with the initials of his name, the several clauses added in the committee."

Chairman to report on allegations of bill, &c.

"The chairman of the committee shall report to the house that the allegations of the bill have been examined, and whether the parties concerned have given their consent (where such consent is required by the Standing Orders) to the satisfaction of the committee."

Committee to report bill in all cases.

"The chairman of the committee shall report the bill to the house, whether the committee shall or shall not have agreed to the preamble, or gone through the several clauses, or any of them; or where the parties shall have acquainted the committee that it is not their intention to proceed with the bill; and when any alteration shall have been made in the preamble of the bill, such alteration, together with the ground of making it, shall be specially stated in the report."

Minutes of committee.

"The minutes of the committee on every private bill shall be brought up and laid on the table of the house, with the report of the bill."

Special reports.

If matters should arise in the committee, apart from the immediate consideration of the bill referred to them, which they desire to report to the house, the chairman should move that leave be given to the committee to make a special report.[1] The house may also instruct the committee to make a special report. A case of a very unusual character occurred in 1837, which deserves particular notice. The bills for making four distinct lines of railway to Brighton had been referred to the same committee: when an unprecedented contest arose among the promoters of the rival lines, and at length it was apprehended that the preamble of each bill would be negatived, in succession, by the combination of three out of the four parties against each of the lines in which the three were not interested, and on which the committee would have to determine separately. This result was prevented by an instruction to the committee "to make a special report of the engineering particulars of each of the lines, to enable the house to determine which to send back for the purpose of

Brighton railway competing lines.

[1] Liverpool Docks, &c., and Birkenhead Dock, &c. Bills; 110 Com. J. 298. Mersey Conservancy and Docks Bill; 112 Ib. 267. 269. Chelsea New Bridge Bill; Ib. 360. Concerning parliamentary deposits, 119 Ib. 125; 120 Ib. 285. 303; 134 Ib. 229; 135 Ib. 266, &c.

having the landowners heard and the clauses settled."[1] This special report was made accordingly: but the house being unable to decide upon the merits of the competing lines, agreed to address the Crown to refer the several statements of engineering particulars to a military engineer.[2] On the report of the engineer appointed, in answer to this address, the house instructed the committee to hear the case of the landowners upon the direct line.[3] In the case of the Devon and Dorset Railway Bill, 1853, the committee made a special report, explaining that they had rejected that bill in expectation of a preferable line of railway being proposed to Parliament, in the next session, by another company.[4]

Witnesses, how to be summoned.

It has been explained, in another part of this work, that committees upon private bills are not entrusted by the house with the power usually given to other select committees, of sending for persons, papers, and records. The parties are generally able to secure the attendance of their own witnesses, without any summons or other process. A large proportion of all the witnesses examined attend professionally; and local interest in the bill, or liberal payments for loss of time, rarely fail in attracting abundance of voluntary testimony. But when it becomes necessary to compel the attendance of an adverse or unwilling witness, or of any official person who would otherwise be unable to absent himself from his duties, application is made to the committee, who, when satisfied that due diligence has been used, that the evidence of the witness is essential to the inquiry, and that his attendance cannot be secured without the intervention of the house, direct a report to that effect to be made to the house; upon which an order is made for the witness to attend and give evidence before the committee.[5]

[1] 92 Com. J. 356.

[2] Ib. 417.

[3] Ib. 519.

[4] Suppl. to Votes, 1853, p. 945; and see, in reference to the same case, Suppl. to Votes, 1855, p. 253. See also Special Report on Eastern Union Railway Bill, Ib. p. 1159.

[5] 105 Com. J. 262; 110 Ib. 121; 122 Ib. 227; 127 Ib. 99; 133 Ib. 98; 134 Ib. 187; 135 Ib. 191; 137 Ib. 101, &c.

Evidence reported.

Besides making the prescribed form of report, or special reports in particular cases, committees have had leave given to report the minutes of evidence taken before them: which have been ordered to be printed, at the expense of the parties, if they think fit,[1] and even in special cases, at the expense of the house;[2] or have been referred to the committee on another bill.[3]

On the 27th June 1851, it was ordered, "That the parties promoting and opposing the Metropolis Water Bill be permitted to print the evidence taken before the committee, day by day, from the short-hand writer's notes, if they so think fit;"[4] and a similar order was made in 1852, in reference to the same inquiry.[5] In one case the committee reported that, in their opinion, a witness had been guilty of perjury.[6]

Reports that parties do not proceed, &c.

If parties acquaint the committee that they do not desire to proceed further with the bill, that fact is reported to the house, and the bill will be ordered to be withdrawn;[7] or the report to lie upon the table.[8] On one occasion, a report was made, that from the protracted examination of witnesses, the promoters desired leave to withdraw their bill, and that the committee had instructed the chairman to move for leave to lay the minutes of evidence on the table of the house.[9] In another case, the committee reported, "That the consideration of two bills should be suspended, in order to afford opportunity for the introduction of another bill:" and they recommended, "That every facility, consistent with the forms of the house, should be given to such a bill during the present

[1] 81 Com. J. 343; 91 Ib. 338; 98 Ib. 324; 107 Ib. 357.

[2] Clarence Railway Bill, 1843; Suppl. to Votes, 5th May, p. 83. Oxford, Worcester and Wolverhampton Railway, &c., 1845; 100 Com. J. 566. Subways (Metropolis) Bill, 1867; 122 Ib. 413. Metropolitan Board of Works (Shoreditch Improvement) Bill, 1871; 126 Ib. 120.

[3] Northumberland (Atmospheric) Railway Bill, 1845; 100 Ib. 536, &c.

[4] 106 Ib. 315.

[5] 107 Ib. 141; see also *supra*, p. 854.

[6] Minutes, 1860, iii. 183; 115 Com. J. 230.

[7] 104 Ib. 510; 131 Ib. 372.

[8] 129 Ib. 98.

[9] 79 Ib. 445.

session."[1] After the preamble of a bill has been proved, the promoters have abandoned the bill, rather than consent to the introduction of a clause insisted upon by the committee.[2]

All bills to be reported.

It is the duty of every committee to report to the house the bill that has been committed to them, and not by long adjournments, or by an informal discontinuance of their sittings, to withhold from the house the result of their proceedings. If any attempt of this nature be made to defeat a bill, the house will interfere to prevent it. Thus, in 1825, the committee on a private bill having adjourned for a month, was "ordered to meet to-morrow, and proceed on the bill;"[3] and again, on the 23rd March 1836, the house being informed that a committee had adjourned till the 16th May, ordered them "to meet to-morrow, and proceed on the bill."[4] And now, every committee on an opposed private bill is required by the Standing Orders to report specially to the house the cause of any adjournment over any day on which the house shall sit.

Adjournment of committees.

Whenever a committee adjourns, the committee clerk is required to give notice in writing to the clerks in the private bill office, of the day and hour to which the committee is adjourned.

Committees revived.

If a committee adjourn, without naming another day for resuming their sittings; or if, from the absence of a quorum, the committee be unable to proceed to business, or to adjourn to a future day, they have no power of re-assembling without an order from the house; and the committee is said to be revived, when this intervention of the house is resorted to. The form in which the order is usually made is, "That the committee be revived, and that leave be given to sit and proceed on a certain day."[5] To avoid an irregularity in the adjournment, care should be taken to appoint a day, before the proceedings of the committee are interrupted by the serjeant-at-arms giving notice that the Speaker is at prayers.

[1] Edinburgh Water Bills, 1846; 101 Com. J. 732.

[2] Glasgow Waterworks Bill, 1848; Minutes, p. 97.

[3] 80 Com. J. 474.

[4] 91 Ib. 195.

[5] 105 Ib. 201.

Hybrid bills in committee.

The proceedings of committees upon "hybrid bills" are generally similar to those of private bill committees; and since 1871, they have had the same power of examining witnesses upon oath. Such committees consist of members nominated partly by the house, and partly by the committee, of selection.[1] The relaxation of the privileges of the Commons, in regard to tolls and charges, does not extend to such bills, but only to bills to confirm provisional orders or certificates, which may now be freely introduced into the House of Lords.[2] Petitioners heard against such bills are charged with the fees of the house.

Provisional order bills.

Bills for confirming provisional orders and certificates, if unopposed, are passed through all their stages, like public bills, and are considered in committees of the whole house; but if after the second reading, petitions are presented praying to be heard against them, the order for the committee of the whole house is discharged, and the bill committed, so far as relates to the places concerned in the petitions, to the committee of selection, or to the general committee on railway and canal bills, by whom a committee is appointed, as in the case of a private bill.[3]

If the bill has already passed through a committee of the whole house, it is recommitted to a select committee to be appointed in the same manner.[4] The proceedings of the select committee to which the bill is referred, and of the referees, are to be conducted as in the case of private bills, and are subject to the same rules and orders, so far as they are applicable, except those which relate to the payment of fees by the promoters. In some cases the committee have decided not to confirm the provisional order, and have awarded costs.[5]

Report.

When the report has been made out and agreed to by the committee, the committee clerk delivers in to the Private Bill Office "the committee bill," being a printed copy of the bill,

[1] 130 Com. J. 216; 131 Ib. 705.

[2] River Lee Conservancy Bill, 1868; and see *supra*, p. 758.

[3] 129 Com. J. 286; 130 Ib. 155; 131 Ib. 176; 133 Ib. 246.

[4] 129 Ib. 345.

[5] 133 Ib. 258.

with the written amendments made by the committee; with every clause added by the committee regularly marked in those parts of the bill in which they are to be inserted. In strict conformity with this authenticated copy, the bill, as amended by the committee, is required by the Standing Orders to be printed at the expense of the parties. When printed, they must be delivered to the doorkeepers, three clear days at least before the consideration of the bill: but it may not be delivered before the report of the bill has been made to the house; and agents, when they give notice at the Private Bill Office, of the day for the consideration of the bill, must produce a certificate from the doorkeeper of the delivery of the amended printed bill on the proper day.[1]

Amended bill to be printed; and delivered.

In some cases the alterations made by the committee have been so numerous and important, as almost to constitute the bill a different measure from that originally brought before the house. In such cases the house has sometimes required the bill to be withdrawn, and another bill presented, which has been referred to the examiners. Thus, on the 21st May 1849, on the report of the Holme Reservoirs Bill, notice being taken that almost the whole of the bill as brought in had been omitted, and a new set of clauses introduced, the bill was ordered to be withdrawn:[2] but, unless the case be one of great irregularity, the later and better practice has been to refer the bill, as amended, "to the examiners, to inquire whether the amendments involve any infraction of the Standing Orders."[3] If the examiner report that there is no infraction of the Standing Orders, the bill proceeds without further interruption: but if he report that there has been such an infraction, his report, together with the bill, will be referred to the Standing Orders Committee.

Bills withdrawn or referred to examiner after report.

In 1876, the Toll Bridges (River Thames) Bill,—a hybrid

[1] Order of the Clerk of the House, 30th March 1844.

[2] 104 Com. J. 320. 453.

[3] River Dee Conservancy; Belfast Improvement; Lee River Trust Bills, 1850; 105 Com. J. 446. 481. 485; Whitechapel Improvement Bill, 1853; 108 Ib. 557. In the case of the Smithfield Market Bill, 10th July 1860, such a reference was refused, 115 Ib. 370.

bill,—underwent so many important alterations in committee as to be substantially a new bill, and its opponents urged that it ought to be withdrawn. But the second reading of the bill had been postponed, while a select committee was considering the whole subject-matter of the bill; and when that committee had reported, the bill was read a second time and committed; and the report of the committee, together with other reports upon the same subject, was referred to the committee on the bill. These proceedings were regarded by the committee as in the nature of an instruction, and amendments had therefore been made, of a comprehensive character, founded upon previous inquiries and recommendations. Under these exceptional circumstances, the Speaker suggested that the house would probably consider that the committee had not so far exceeded its powers as to require the withdrawal of the bill. But as private rights and interests were concerned in the bill, and in the amendments made by the committee, he recommended that it should be referred to the examiners. This was accordingly done: and though it appeared that in respect of some of the amendments the Standing Orders had not been complied with, the Standing Orders Committee reported that they ought to be dispensed with; and the bill was allowed to proceed through all its further stages.[1]

Report to lie upon the table.

The report of the bill is ordered to lie upon the table, and the bill, if amended in committee, or a railway or tramway bill, is ordered to lie upon the table; and every other bill, when reported, is ordered to be read a third time. The bill reported to the house is a duplicate copy of the committee bill, including all the amendments and clauses as agreed to by the committee. In 1882, the minutes of proceedings of the committee on the Regent's Canal and Railway Bill were ordered to be printed.[2]

Interval between report and consideration of bill.

In the case of private bills ordered to lie upon the table, three clear days are required to intervene between the report

[1] 131 Com. J. 354, &c.; 230 Hans. Deb. 3rd Ser. 1679; Mr. Speaker Brand's Note-Book.

[2] 137 Com. J. 254.

and the consideration of the bill. And three clear days, at least, before the consideration of the bill, a copy of the bill, as amended in committee, is to be laid by the agent before the chairman of ways and means, and the counsel to the Speaker, and deposited at the Office of the Board of Trade.

Bill as amended to be laid before chairman of ways and means.

One clear day's notice, in writing, is required to be given by the agent for the bill, to the clerks in the Private Bill Office, of the day proposed for the consideration of every private bill ordered to lie upon the table.

Notice of consideration of bill.

When it is intended by the promoters or opponents to bring up any clause, or to propose any amendment on the consideration of any bill ordered to lie upon the table, or any verbal amendment, on the third reading,[1] notice is to be given, in the Private Bill Office, one clear day previously. No clause or amendment may then be offered, unless the chairman of ways and means have informed the house, or signified in writing to Mr. Speaker, whether, in his opinion, it be such as ought (or ought not) to be entertained by the house, without referring it to the Standing Orders Committee. And the clause or amendment, when offered by a party promoting or opposing a bill, is to be printed; and when any clause is proposed to be amended, it is to be printed *in extenso*, with every addition or substitution in different type, and the omissions therefrom in brackets, and underlined.[2] And on the day on which notice is given, the clause or amendment is to be laid before the chairman of ways and means, and the counsel to Mr. Speaker. But if any clause or amendment be proposed by a member, independently of the parties concerned in the bill, he may either give notice in the Votes, as in the case of a public bill, or in the Private Bill Office.

Consideration of bill; clauses and amendments.

When referred to Standing Orders Committee.

Clauses or amendments to be printed.

If a clause or amendment be referred to the Standing Orders Committee, there can be no further proceeding until the report has been brought up. When the clause or amend-

Report of Standing Orders Committee.

[1] 112 Com. J. 215. 275.

[2] The expense of printing is borne by the party offering the clause or amendment.

ment has been offered on the consideration of the bill, they report whether it should be adopted by the house or not, or whether the bill should be recommitted. If a verbal amendment be offered on the third reading, they merely report whether it ought (or ought not) to be adopted by the house at that stage.

Clauses and amendments.

On the consideration of the bill, the house may, subject to the preliminary proceedings already described, introduce new clauses or amendments, or the bill may be recommitted, or ordered to be considered on a future day. If any clause or amendment be opposed, its consideration is adjourned until the next sitting of the house.

Recommitment.

When bills are recommitted, they are referred to the former committee; and no member can then sit, unless he had been duly qualified to serve upon the original committee on the bill, or be added by the house.[1] In the case of a recommitted bill, two has sometimes been the quorum.[2] Unless the bill be recommitted by the house, with express reference to particular provisions, the whole bill is open to reconsideration, in committee.

Notice of committee.

One clear day's notice is to be given by the committee clerk, of the meeting of the committee; and a filled-up bill, as proposed to be submitted to the committee, on recommittal, is to be deposited by the agent in the Private Bill Office, two clear days before the meeting of the committee.

Entry of amendments on report or third reading; and Lords' amendments.

When amendments are made by the house on the consideration of a bill, or verbal amendments on the third reading, and when Lords' amendments have been agreed to, they are entered by one of the clerks in the Private Bill Office, upon the printed copy of the bill, as amended in committee. That copy is signed by the clerk, as amended, and preserved in the office.

Notice of third reading.

One clear day's notice, in writing, is required to be given by the agent for the bill, to the clerks in the Private Bill

[1] Warrington and Altrincham Railway Bill, 1853; 108 Com. J. 698.

[2] Cleobury, North, &c. District Roads, 1856; 111 Com. J. 256.

Office, of the day proposed for the third reading; and this notice may not be given until the day after the bill has been ordered to be read a third time. If necessary, the order for the third reading may be discharged, and the bill recommitted.[1]

Third reading.

On the third reading, verbal amendments only may be proposed, subject to the rules already stated in regard to the consideration of the bill as amended. In other respects this stage is the same as in public bills; the house finally approves of the entire bill, with all the alterations made since the second reading, and preparatory to its being passed and sent up to the House of Lords.[2]

Queen's consent.

This is usually the stage at which the Queen's consent is signified to any bill affecting the property or interests of the Crown, or Duchy of Lancaster; and the consent of the Prince of Wales, when of age, on behalf of the Duchy of Cornwall.[3] On the 20th of April 1852, notice being taken that her Majesty's interest was concerned in the Rhyl Improvement Bill, and that her consent had not been signified thereto, the proceedings on the third reading of the bill, on a previous day, were ordered to be null and void.[4]

Certificate of examination.

No private bill is permitted to be sent up to the House of Lords, until a certificate is endorsed on the fair printed bill, and signed by the proper officers, declaring that such printed bill has been examined, and agrees with the bill as read a third time.

No bill to pass through more than one stage in a day.

Every stage of a private bill, in its passage through the Commons, has now been described, with the several Standing Orders and proceedings applicable to each. In conclusion, it may be added—1. "That no private bill may pass through two stages on one and the same day, without the special leave of the house;" and 2. "That, except in cases of urgent and

[1] 106 Com. J. 202. 209.

[2] See *supra*, p. 581 *et seq.*

[3] 108 Com. J. 716; 110 Ib. 334; 132 Ib. 245, &c.

[4] 107 Ib. 157. See Blackwater (Youghal) Wooden Bridge, 1866; 121 Com. J. 423.

When Standing Orders to be dispensed with.

pressing necessity, no motion may be made to dispense with any sessional or Standing Order of the house, without due notice thereof."

Lords' amendments.

If the bill be subsequently returned from the Lords with amendments, notice is to be given, in the Private Bill Office, one clear day before they are to be considered, and if any amendments be proposed thereto, a copy of such amendments is to be deposited; and no such notice may be given until the day after that on which the bill has been returned from the Lords. A copy of such amendments is also to be laid before the chairman of ways and means, and the counsel to Mr. Speaker, before two o'clock on the day previous to that on which they are to be considered; and as the Lords' amendments may relate to matters which might be construed to involve an infringement of the privileges of the Commons; and the amendments proposed to them may be in the nature of consequential amendments,[1] the Speaker's sanction must be obtained before they are proceeded with. Before Lords' amendments are taken into consideration, they are printed at the expense of the parties, and circulated with the Votes; and where a clause has been amended or a Lords' amendment is proposed to be amended, it is printed *in extenso*, with every addition or substitution in different type, and omissions included in brackets and underlined. If any amendment be proposed to the Lords' amendments, involving a charge upon the people, it is committed to a committee of the whole house.[2] In the case of the Great Northern Railway (Isle of Axholme Extension) Bill, the Lords' amendments were referred to a committee nominated by the committee of selection.[3] In other cases, the Lords' amendments have been re-committed, or referred, to the former committees by whom the bills had been considered.[4]

[1] See *supra*, p. 587.

[2] Ulverstone and Lancaster Railway Bill; 106 Com. J. 358. Manchester Improvement Bill; Ib. 398.

[3] 103 Com. J. 790.

[4] Nene Valley Drainage Bill, 1852; Salford Improvement Bill, 1862; 117 Ib. 360. Great Eastern Railway Bill, 1867.

In case a bill should not be proceeded with in the Lords, in consequence of amendments having been made which infringe the privileges of the Commons, the same proceedings are adopted as in the case of a public bill. A committee is appointed to search the Lords' Journals, of which previous notice is to be given by the agent, in the committee clerks' office; and on the report of the committee, another bill (No. 2) will be ordered, including the amendments made by the Lords.

Committee to search Lords' Journals.

CHAPTER XXVII.

COURSE OF PROCEEDINGS IN THE LORDS UPON PRIVATE BILLS SENT UP FROM THE COMMONS.

Private bills originating in the Commons.

FORMERLY, the only private bills which could originate in the Lords were those which did not concern rates, tolls, or duties. But the convenient relaxation in the privileges of the Commons,[1] and the desire which has been evinced to equalise the pressure of private business upon the two houses, has led to arrangements for the introduction of a certain proportion of bills into the House of Lords. The private bills which have always been first brought into the Lords are estate, naturalisation, name and divorce bills, and such as relate to the peerage, which are now termed personal bills, in the Lords' Standing Orders. In tracing the progress of private bills through this house, it will be convenient to assume that the bills comprised in the two classes, already enumerated,[2] and which are now distinguished by the Lords as local bills, have been sent up from the Commons, and that the personal bills only are brought in upon petition. As the progress of local bills has been already followed through the Commons, it is now proposed to pursue them through their various stages in the Lords.

The two classes of bills.

Bills submitted to chairman, &c. while bill pending in Commons.

It may here be observed that the progress of a bill through the Lords, after it has passed the Commons, is much facilitated by the practice of laying the bill before the chairman of the Lords' committees and his counsel,[3] and giving effect to their observations during the progress of the bill through the Commons. The amendments suggested in the Lords are

[1] See *supra*, p. 758.
[2] See *supra*, p. 768.
[3] See *supra*, p. 808.

thus embodied with the other amendments, before the bill has passed the Commons: and unless the bill be opposed, its progress through the Lords is at once easy and expeditious. Another advantage of this mode of amending the bill, as it were by anticipation, is that numerous amendments may then be conveniently introduced, which could not be made by the Lords without infringing the privileges of the Commons.

Bills in the nature of estate bills referred to the judges.

Whenever a private bill, in the nature of an estate bill, is brought up from the Commons, it is read a first time; and a copy of the bill, signed by the clerk, is referred to two of the judges in rotation, not being lords of Parliament, who are to report their opinion, whether, presuming the allegations of the preamble to be satisfactorily established, it is reasonable that the bill do pass; and whether the provisions are proper for carrying its purposes into effect, and what amendments, if any, are necessary. In the event of their approving the bill, they are to sign the same: but, except in special cases, no other Commons bills are referred to the judges.

Examiners of Standing Orders.

On the 3rd August 1854, the Lords first appointed examiners, to take proofs of compliance with the Standing Orders, and the evidence taken before them was received by the Standing Order Committee, as if it had been given before themselves. On the 30th July 1858, the same powers were delegated to the examiners, which those officers had exercised for the Commons ever since their first appointment, in 1846. By the present Standing Orders of their Lordships, there are two officers of the house called "the Examiners of Standing Orders for Private Bills," appointed by the house. A printed copy of every private bill, except estate, name, naturalisation and divorce bills (distinguished in the Lords' Standing Orders as personal bills), proposed to be introduced into either house, is required to be deposited in the office of the clerk of the Parliaments on or before the 17th December; and the examination of the bills so deposited is to commence on the

18th January. Any parties may appear before the examiners and be heard, by themselves, their agents and witnesses, upon a memorial addressed to the examiner, under precisely the same conditions as in the Commons.

The examiner certifies whether the Standing Orders have or have not been complied with; and when they have not been complied with, he certifies the facts upon which his decision is founded, and any special circumstances connected with the case; and his certificate is deposited in the office of the clerk of the Parliaments. If the examiner feels doubts as to the due construction of any Standing Order, he may make a special report, which will accompany his certificate.

In cases of petitions for additional provision in private bills, originating in the House of Lords, the examiner is to give two days' notice of the day on which it will be examined, and he is to report to the house whether the Standing Orders have or have not been complied with, &c.

By these arrangements the proofs of all the requirements of the Standing Orders which are to be complied with, prior to the introduction of the bill into either House of Parliament, are taken before the bill is brought into the House of Lords; and every bill, in the two classes, and every provisional order confirmation bill, brought from the Commons is referred, after the first reading, to the examiners, before whom compliance with such Standing Orders as have not been previously inquired into, are proved. The examiner gives two clear days' notice of his examination; and memorials are to be deposited, with two copies, before 12 o'clock on the preceding day. The certificates of the examiners are laid upon the table of the house, the first day on which the house sits after their deposit. The orders to be subsequently proved will be presently noticed.

Standing Order Committee.

The Standing Order Committee is appointed at the commencement of every session, and consists of forty lords, besides the chairman of the Lords' committees, who is

always chairman of the Standing Order Committee; and three lords, including the chairman, are a quorum.

The functions of this committee are now assimilated to those of the Standing Orders Committee in the House of Commons. When any certificate of the examiner, stating that the Standing Orders have not been complied with, or any special report has been referred to them, they make a report in the same terms as that committee.[1] The parties affected may be heard by the committee, provided they have deposited a statement, strictly confined to the points reported upon by the examiner. In all opposed cases such statements are to be printed. No party appearing before the committee will be allowed to travel into any matter not referred to in his statement. Such statements are to be lodged in the office of the clerk of the Parliaments, not later than three o'clock on the day before that on which the committee are appointed to meet. Three clear days' notice is to be given of the meeting of this committee.

The decision of the committee is ordinarily conclusive, but, in special cases, is liable to reversal by the house.[2]

Other Standing Orders.

In addition to the Standing Orders already proved before the examiners, prior to the introduction of the bill, there are other orders, compliance with which is proved at a later period, before the examiner. They relate to particular classes or descriptions of bills, and will be stated as they respectively apply to each.

It is directed by an order, commonly known as "The Wharncliffe Order," which has been often amended, and is now divided into several sections:[3]—

Meeting of proprietors in case of certain bills originating in the Lords.

1. Every bill originating in this house, and conferring additional powers on the promoters thereof, being a company already constituted by Act of Parliament, shall after the first reading be referred to the examiners, who shall report as to

[1] See *supra*, p. 779.

[2] Smithfield Market Removal Bill, 4th July 1851.

[3] S. O., Nos. 62—66.

compliance with the several directions of that order relative to the meeting of proprietors, and their approval of the bill submitted to them.

Bill to be submitted to a meeting of proprietors of incorporated companies in certain cases.

2. In the case of every bill brought from the House of Commons, in which provisions have been inserted in that house, to empower any company already constituted by Act of Parliament to execute, undertake or contribute towards any work other than that for which it was originally established, or to sell or lease their undertaking or any part thereof, or to amalgamate the same or any part thereof with any other undertaking, or to abandon their undertaking or any part thereof, or to dissolve the said company, &c.; the examiner shall report as to compliance with the order requiring the consent of the proprietors.

Meeting of members of limited companies.

3. Every bill originating in this house, and empowering any company, association, or co-partnership formed or registered under the Companies Act, 1862, or otherwise than by Act of Parliament, to do any act not authorised by the articles of association is, after the first reading, to be referred to the examiners, who are to report as to compliance with the directions of the order, requiring the consent of a majority of three-fourths in number and value of the shareholders.

4. Similar requirements are exacted in the case of such bills brought from the Commons.

It is ordered,

Proprietor dissenting may petition to be heard.

"That in case any proprietor, shareholder or member of any company, association or co-partnership, who, by himself or any person authorised to act for him in that behalf, have dissented at any meeting called in pursuance of Standing Orders, Nos. 62, 63, 64, 65, or 66, such proprietor shall be permitted to be heard by the examiner on the compliance with such Standing Order, by himself, his agents and witnesses, on a memorial to be addressed to the examiner, to be deposited, together with two copies thereof, in the office of the clerk of the Parliaments, before twelve o'clock on the day before that appointed for the examination; and on petitioning the house, by the committee on the proposed bill, by himself, his counsel or agents and witnesses."

The Wharncliffe order in the Commons.

In 1858, the Commons also adopted the Wharncliffe order for the first time; and after the first reading of any bill

originating in that house, to empower a company already constituted by Act of Parliament to execute or contribute towards any work other than that for which it was originally established, &c., the bill is referred to the examiners, who are to report as to compliance or non-compliance with that order.

It is further ordered by the Lords that—

Proof of consent to subscriptions to another company.

"When any bill contains a provision authorising any company to subscribe towards, or to guarantee, or to raise any money in aid of the undertaking of another company, proof is required before the examiner that the company so authorised has duly consented to such subscription, &c., at a meeting of proprietors, subject to the same provisions as the meeting directed to be held under Order 64.

"Where such consent has been given, the bill in respect of such provision need not be submitted to the approval of a meeting to be held in accordance with Order 64.

Certain railway bills submitted to grand juries in Ireland.

"When any railway bill, originating in the House of Lords, charges payments on grand jury cess or local rate, it is to be submitted to, and approved by, the grand jury or local authority, and notice given thereof; and proof of compliance with these requirements is to be given before the examiners.

Consent of directors, &c. who are named in a bill to be proved.

"When in any bill brought from the House of Commons for the purpose of establishing a company for carrying on any work or undertaking, the name of any person or persons appears as manager, director, proprietor, or otherwise concerned in carrying such bill into effect, proof shall be required before the examiner that the said person or persons have subscribed their names to the petition for the bill, or to a printed copy of the said bill, as brought up to this house."

Notices to be given and deposits made where work is altered in Parliament.

Whenever any alteration has been made, or is desired by the parties to be made, in any work of the second class, after the introduction of the bill into Parliament, proof is to be given before the examiners that plans and sections of such alterations, together with a book of reference, have been deposited with the clerk of the Parliaments and with the clerks

of the peace, &c. two weeks before the introduction of the bill into that house; and that notices have been published, and application made to the owners, lessees, and occupiers of the lands through which the alteration is intended to be made, and their consent is to be proved before the examiner.

Railway bills.

A copy of every railway bill, as brought into the House of Lords, is to be deposited in the office of the Board of Trade, not later than two days after the bill is read a first time; and afterwards a copy of the bill, as amended in committee, is to be deposited three days before the third reading; and proof of compliance with this order is to be given by depositing a certificate from the board, in the Private Bill Office.

These are the several Standing Orders of the Lords, peculiar to that house, which must be proved before the examiner, or otherwise. Others will presently be added, in describing the further stages of bills.

First and second reading.

No local bill is to be read a first time until after the examiner has certified compliance with the Standing Orders, and, if originating in the Lords, is to be read not later than three clear days after such certificate. No local bill brought from the Commons, or provisional order bill, is to be read a second time until after the certificate of the examiner; nor after certain dates (generally in June) determined by Sessional Orders.[1] Bills relating to charities are not to be read a second time until the house has received a report from the Attorney-General. And railway bills for increasing maximum rates are not to be read a second time until after a report from the Board of Trade has been laid upon the table. No local bill, or provisional order bill, is to be read a second time earlier than the fourth day, nor later than the seventh day, after the first reading, except in certain cases.

Petitions against bills, when to be presented.

No petition praying to be heard upon the merits, against any local bill or provisional order confirmation bill will be received unless it be presented by being deposited in the Private Bill Office, before three o'clock in the afternoon, on or before

[1] 109 Lords' J. 120, &c.

the seventh day after the first reading. In the case of such bills originating in the House of Lords, petitions are to be presented on or before the seventh day after the second reading.

Petitions for additional provision.

No petition for additional provision is to be presented without the sanction of the chairman of committees; and no such petition will be received in the case of a bill brought from the House of Commons.

Houses of the labouring classes.

The same provision is made as in the Commons, in regard to bills in which power is sought to take houses inhabited by the working classes.

Amalgamation bills.

When powers are applied for to amalgamate with any other company, or to sell or lease the undertaking, or purchase or take on lease another undertaking, or to enter into traffic arrangements, all such particulars are to be specified in the bill as introduced into Parliament.

Second reading and commitment.

The second reading, as in the Commons, affirms generally the principle of the bill, subject to the proof of the allegations of the preamble, before the committee, and is immediately followed by the commitment. Unopposed local and provisional order confirmation bills are referred to "all the lords present this day," who are presided over by the chairman of the Lords' committees, assisted by his counsel. These open committees are attended by any of the lords who had been present: but the business is practically transacted by the chairman of committees, and the responsibility is vested in him by the house. Every bill has been previously examined by the chairman and his counsel: but at this period the chairman exercises the authority of his own office, combined with that of a committee of the house. In the absence of the chairman from illness, another peer has been appointed to take the chair in all committees, upon private bills, and other matters.[1] This supervision of private bills, by responsible officers, originated in the House of Lords; and for many years the House of Commons, relying upon the aid which its legislation received from the other house, did not adopt any similar arrangement of its own: but, as private

Unopposed bills referred to open committees.

Chairman of committees and his counsel.

[1] Viscount Eversley, 13th Feb. 1871; 103 Lords' J. 15.

business increased in importance, the house gradually entrusted to the chairman of ways and means, many duties analogous to those performed by the chairman of committees in the House of Lords. And with the assistance of the counsel to Mr. Speaker, he is now charged with the supervision of all private bills.

Unopposed bills when treated as opposed.

The chairman of committees may, in any case, report his opinion to the house, that any unopposed bill on which he shall sit as chairman, ought to be proceeded with as an opposed bill.[1]

Committees on opposed bills.

Every opposed local bill or provisional order bill is referred to a select committee of five, selected by the committee of selection, by whom also the chairman is appointed. Every one of the committee is ordered to attend the proceedings during their whole continuance; and no lord who is not one of the five, is permitted to take any part in the proceedings. Lords are exempted from serving on the committee on any bill in which they are interested, and may be excused from serving for any special reasons, to be approved of, in each case, by the house.

Committee of selection.

These committees are appointed in a manner very similar to that adopted in the Commons. The committee of selection consists of the chairman of committees and four other lords, who select and propose to the house the names of the five lords who are to form a select committee for the consideration of each opposed local or provisional order bill, and appoint the chairman. On the 2nd April 1868, it was resolved that the absence of any lord, except on sufficient reason, ought not to prevent the committee of selection from calling for his services.[2]

Sittings of committees on bills.

The attendance of the Lords upon such committees is very strictly enforced. The committee is to

"Meet not later than eleven o'clock every morning and sit till four, and shall not meet at a later hour, nor adjourn at an earlier hour, without leave of the house, or without reporting the cause of such later meeting or earlier adjournment. No committee shall adjourn

[1] Oriental Bank Corporation Bill, 1873.

[2] 103 Lords' J. 103.

over any day except Saturday and Sunday, Christmas Day, and Good Friday, without leave of the house: but should a committee meet on a Saturday, the sitting is to be in conformity with this order."

"All the members are to attend the proceedings of the committee, during the whole continuance thereof."

"If any member is prevented from continuing his attendance, the committee shall adjourn, and shall not resume its sittings in the absence of such member, without leave of the house; but if the house is not then sitting the committee may, with the consent of all parties, continue its sittings in the absence of any member, provided that the number of the committee be not less than four, and that the committee report accordingly to the house, at its next meeting."[1]

Proceedings of committees on bills.

The committee on the bill, whether opposed or not, perform the same duties as in the Commons. They examine the provisions of the bill, make amendments, add clauses, and, in particular cases, inquire into the compliance with such Standing Orders as are to be proved before them. No committee on a local or provisional order confirmation bill, however, may examine into the compliance with such Standing Orders as are required to be proved before the examiners.

Where opposition withdrawn.

If no parties appear on their petitions against a bill, or having appeared, withdraw their opposition, the committee is forthwith to refer it back, with a statement of the facts, to the chairman of committees, to be dealt with by him as if originally unopposed.

Witnesses on oath.

The proceedings of a Lords' committee differ in no material point from those of a committee in the Commons. By the 21 & 22 Vict. c. 78, any committee of the House of Lords may administer an oath to the witnesses examined before them; and thus the inconvenience of a previous attendance at the bar of the house is avoided.

Petitioners heard.

When petitions against the bill are referred, the parties are heard by themselves, their counsel, agents, and witnesses, in the same manner, and subject to nearly the same rules, as in the Commons. Some are heard upon the preamble, and others against particular clauses, or in support of new clauses or amendments: but the committee require both parties to state all the amendments which they

[1] See debates on the absence of Lord Gardner, 24th and 26th June 1845; 81 Hans. Deb. 3rd Ser. 1104. 1190.

intend to propose, before the room is cleared for the purpose of deliberating upon the preamble. The bill is gone through, clause by clause, and after all amendments have been made, it is reported, with the amendments, to the house.

It is ordered by the Lords, that proprietors dissenting at a meeting held under the Wharncliffe order, may be heard before the examiners on the compliances with such Standing Order, or on petitioning the house, by the committee on the bill.

Special Standing Orders to be proved or enforced.

The directions to Lords' committees upon local bills are generally similar to those of the Commons, already described, and the greater part of the Standing Orders relating to railway and other local bills are the same.[1] They differ, however, in regard to particular matters, which, by special Standing Orders, are required to be proved or enforced, either in relation to all bills, or to bills of particular classes or descriptions. These orders may now be enumerated.

Letters patent bills, special orders.

Compliance with the following Standing Orders specially relating to bills for extending the terms of letters patent, is to be proved before the committee on the bill:—

1. "Every bill for confirming any letters patent is required to have a true copy of such letters patent annexed."

2. "The term of any letters patent for any invention or discovery granted under the great seal of England, Scotland or Ireland, shall not be extended, unless such letters patent will expire within two years from the commencement of the session of Parliament in which the application for such bill is to be made; and unless it shall appear that the application for extending the term of the letters patent is made by the person, or by the representatives of the person who himself originally made the invention or discovery for which such letters patent were granted; and that the knowledge of such invention was not acquired by such person by purchase or otherwise, or by information that such invention or discovery was known and pursued in any foreign country."

The following orders respecting a cemetery or burial ground are to be observed by the committee on the bill:—

Cemetery or burial ground.

"In every bill for making, altering or enlarging any cemetery or burial ground, a clause shall be inserted prohibiting the making, altering or enlarging such cemetery or burial ground within 300 yards of

[1] See *supra*, p. 846 *et seq.*

any house of the annual value of 50*l.*, or of any garden or pleasure ground occupied therewith, except with the consent of the owner, lessee and occupier thereof in writing."

Limits of cemetery or gas works, &c.

In every bill for making, altering or enlarging any cemetery or burial ground, or for constructing gas works or sewage works, or works for the manufacture or conversion of residual products, there shall be inserted a clause defining the limits within which such cemetery or burial ground may be made, or such works may be constructed.

Provisions required to be inserted in railway bills.

In the case of railway bills, in addition to the general inquiries conducted by the committee, they are ordered to observe that particular provisions be inserted for restricting loans on mortgage; for maintaining the levels of roads, and for restraining the crossing of roads on a level. They are also required to observe the same rules, and to introduce the same clauses and provisions, as in the Commons, relative to the non-payment of interest on calls or deposits out of capital, and the financial arrangements of companies in cases of purchase and amalgamation.[1] All these provisions, however, being included in the bill when it leaves the Commons, need not be more particularly mentioned here.

A clause is also required to be inserted in every railway bill:

Election of directors in railway companies.

"The directors appointed by this Act shall continue in office until the first ordinary meeting to be held after the passing of the Act, and at such meeting the shareholders present, personally or by proxy, may either continue in office the directors appointed by this Act, or any number of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by this Act being eligible as members of such new body."

Recommitment of bills.

No local bill is to be re-committed to the same or another committee before the third day on which the house shall sit after notice has been given of the motion to re-commit the bill.

Recommitment to com-

In order to ensure attention to bills affecting public inte-

[1] See *supra*, p. 847.

mittee of the whole house.

rests, the chairman of committees may propose that any local bill be re-committed to a committee of the whole house; and printed copies of such bills are to be delivered to the Lords at least two days before the committee; but no local bill so re-committed is, by reason of such commitment, to be allowed to proceed as a public bill.

Amended bills to be re-printed.

It is further ordered, that all local bills in which any amendments have been made in the committee, shall be reprinted as amended, previously to the third reading, unless the chairman of the committee shall certify that the re-printing of such bill is unnecessary.

Amended railway bill to be deposited at Board of Trade.

A copy of every railway bill, as amended in committee, is to be deposited at the Board of Trade three days before the third reading, and proof thereof is to be given by depositing a certificate from that board in the office of the clerk of the Parliaments.

Amendments on report and third reading.

No amendment may be moved to any bill on the report or third reading, unless it have been submitted to the chairman of committees, and printed copies, in any case in which he shall not consider printing to be unnecessary, deposited in the office of the clerk of the Parliaments one clear day, at least, prior to such report or third reading.

Proceedings after third reading.

When a private bill has been read a third time, and passed, it is either returned to the Commons, with amendments, or a message is sent to acquaint the Commons that it has been agreed to without any amendment. The ordinary proceedings in the Commons upon amendments made to such bills were described in the last chapter.[1] In the event of any disagreement between the houses in reference to amendments, the same forms are observed as in the case of public bills.[2]

[1] See *supra*, p. 876.

[2] See *supra*, p. 586.

CHAPTER XXVIII.

RULES, ORDERS, AND COURSE OF PROCEEDINGS IN THE LORDS UPON PRIVATE OR PERSONAL BILLS BROUGHT INTO THAT HOUSE UPON PETITION: AND PROCEEDINGS OF THE COMMONS UPON PRIVATE BILLS BROUGHT FROM THE LORDS. LOCAL AND PERSONAL AND PRIVATE ACTS OF PARLIAMENT.

Private bills originating in the Lords.

HAVING traced the progress of private bills received from the Commons, through every stage in the House of Lords, until they are returned to the house in which they originated, it is time to advert to the proceedings peculiar to those bills which are first solicited in the Lords.

Personal bills.

All estate, divorce, naturalisation, and name bills, and all other private bills not elsewhere specified as local bills, are termed personal bills.

It is ordered that—

Petitions for bills.

"No personal bill shall be brought into this house until the house be informed of the matters therein contained, by petition for leave to bring in such bill;" and, "that one or more of the parties principally concerned in the consequences of any personal bill, shall sign the petition that desires leave to bring such personal bill into this house."

Personal bills to be delivered to persons concerned.

A copy of every personal bill is to be delivered to every person concerned before the second reading; and, in case of infancy, such copy is to be delivered to the guardian, or next relation of full age, not concerned in the consequences of the bill.

Bills for restitution of honours and in blood.

To these rules, however, there is a remarkable exception. Bills for reversing attainders; for the restoration of honours and lands; and for restitution in blood, are first signed by the Queen, and are presented by a lord to the House of Peers, by command of the Crown; after which they pass through the ordinary stages, and are sent to the Commons.

Here the Queen's consent is signified before the first reading; and if this form be overlooked, the proceedings will be null and void.[1] After the second reading, the bill is committed to several members specially nominated, "and all the members of this house who are of her Majesty's most honourable privy council, and all the gentlemen of the long robe."[2] Such bills receive the royal assent in the usual form, as public bills.[3]

The Lords, having power to consult the judges in matters of law, order that—

Petitions for English estate bills referred to two of the judges.

"Every petition for an estate bill not approved by the Chancery Division of the High Court of Justice concerning estates in land in England, shall, on presentation, be referred to two of the judges of the Queen's Bench [Common Pleas or Exchequer] Division of the said Court, who are to report to the house, under their hands, whether, presuming the allegations contained in the preamble to be proved to the satisfaction of the lords spiritual and temporal in Parliament assembled, it is reasonable that such bill do pass into a law, and whether the provisions thereof are proper for carrying its purposes into effect, and what amendments, if any, are required therein; and in the event of their approving the said bill, they are to sign the same."

Scotch and Irish estate bills.

There are similar orders, *mutatis mutandis*, in respect of Scotch and Irish estate bills.

Petition, &c. to be delivered to chairman of committees.

No estate bill will be read a first time, until a copy of the petition and of the report of the judges has been delivered to the chairman of committees.

Notice to mortgagees.

Notice of an estate bill is to be given to every mortgagee, before the second reading.

Committees on estate bills.

No committee is to sit upon any estate bill until ten days after the second reading.

Petitions against estate bills.

Petitions against estate bills are to be presented at such time, and such proceedings are to be taken thereon, as the chairman of committees shall, in each case, having regard to all the circumstances, direct.

[1] Drummond's Restitution Bill, 1853; 108 Com. J. 578.

[2] 108 Com. J. 584.

[3] 56 Lords' J. 260. 425; and Report of Precedents, Ib. 286. Maxwell's Restitution Bill, 1848; 80 Ib. 270. 365. Lord Lovat's Restitution Bill, 1854.

Time limited for petitions for bills.

At the commencement of every session, an order is made that no petitions for private bills shall be received after a certain day; nor any report from the judges thereon, after another day more distant;[1] but this order, like the preceding, refers to estate bills alone.

Committees on estate bills.

The several proceedings of committees on estate bills, the consents and acceptances of trusts, the evidence required, the provisions to be inserted, and all other matters, are specifically directed by the Standing Orders.[2]

Divorce bills.

Both houses have retained their Standing Orders in regard to divorce bills, as, for the present at least, parties beyond the jurisdiction of the court for divorce and matrimonial causes in England may still apply for divorce Acts; and particularly in India, whence a large proportion of such applications have ordinarily proceeded; but as these are exceptional cases, for which it may be hoped that the legislature will soon provide a more convenient tribunal, it will be sufficient to direct the attention of parties interested to the Standing Orders themselves, without a more particular allusion to them.

No naturalization bill to be read a second time without a certificate, &c.

It is ordered, "that no bill for naturalizing any person born in any foreign territory shall be read a second time, until the petitioner shall produce a certificate from one of his majesty's principal secretaries of state respecting his conduct;" and that no such bill shall be read a second time, unless the consent of the Crown has been previously signified. But certificates of naturalization being now granted by the Secretary of State, under the 7 & 8 Vict. c. 66, and 33 & 34 Vict. c. 14, Naturalization Acts are no longer applied for, except in a few exceptional cases, where more extended privileges are sought than are granted under the general law, and especially the right of sitting in Parliament, which, though not

[1] The order is not enforced where a peer is the petitioner, or if proceedings be pending in chancery, or if the bill has been rendered necessary by circumstances arising too late for compliance with this order.

[2] Standing Orders, Nos. 160–174.

expressly conferred, has been given, in effect, by later Naturalization Acts.[1]

Second reading of bills.

No particular interval is enforced between the first and second readings of personal bills, and if printed copies of the bill have been delivered, and the bill be unopposed, it may be read a second time on any future day. If it be opposed upon its principle, this is the proper stage for taking the decision of the house upon it. No provisional order bill is to be read a second time after some day in June, as defined by sessional order.

Petitions against second reading.

It is not usual for petitions to be presented, praying to be heard against any private bills on the second reading, except divorce and peerage bills; and in those cases, whether there are opposing petitions or not, counsel are heard and witnesses examined at the bar, in support of the bill on the second reading.

Depositions in India in divorce cases.

It may be stated in regard to divorce bills, that when the adultery is alleged to have been committed in India, depositions taken before the judges in India are admitted as evidence. By the Act 1 Geo. IV. c. 101, when any person petitioning either house of Parliament for a divorce bill, states that the witnesses necessary to substantiate the allegations of the bill are resident in India, the Speaker of such house may issue his warrant or warrants to the judges of the supreme courts of Calcutta, Madras, or Ceylon, or to the recorder of Bombay, for the examination of witnesses; and the evidence taken before them, accompanied by a declaration that the examinations have been fairly conducted, is admissible in either house of Parliament. The proceedings upon a divorce bill, when a warrant has been issued under this Act, are not discontinued by any prorogation or dissolution of Parliament, until the examination shall have been returned: but "such proceedings may be

[1] Bishop of Jerusalem, 1846; Mr. Tufton, 1849; Giustiniani, 1857, 1860; Bolckow, 1868; Sir Richard Wallace, 1872; De Virte and Baron Mackay, 1877; Baron de Ramingen, 1880, passed in two days.

resumed and proceeded upon in a subsequent session, or in a subsequent Parliament, in either house of Parliament, in like manner, and to all intents and purposes, as they might have been in the course of one and the same session."[1]

Warrant for taking depositions, how obtained.

When a petitioner prays that evidence may be taken in India by virtue of this Act, his petition is referred to a committee, upon whose report the orders are made for issuing the necessary warrants, and the bill is read a first time. No further proceeding can then take place until the depositions have been returned from India; and, unless they are received in time to proceed while Parliament is sitting, the bill is not read a second time until the following session. If the proceedings of ecclesiastical and other courts have been laid before the house, upon a divorce bill, in the preceding session, the agent may petition the house to dispense with a second copy.[2]

Commitment.

All the ordinary personal bills are referred to an open committee, consisting, as already explained, of the lords then present; who inquire whether all the Standing Orders applicable to such bills have been complied with, and take care that the proper provisions are inserted.

Divorce bills to a committee of the whole house.

Unlike other private bills, divorce bills, instead of being committed to an open committee, or to a selected committee, are committed, like public bills, to a committee of the whole house.

Report. Third reading, &c.

When a private bill is reported from a committee, and any amendments that may have been made are agreed to by the house, the bill is ordered to be read a third time on a future day, when it is read a third time, passed, and sent to the House of Commons, in the usual form.

Lords' private bills in the Commons.

The bills sent down to the Commons pass through the same stages, and are subject to nearly the same rules, as other private bills, except that name bills need not be printed.

[1] 1 Geo. IV. c. 101, s. 4.

[2] 78 Lords' J. 1043.

Referred to examiners.

The bills when received from the Lords and provisional order bills are read a first time, and, unless they be name or divorce bills, are referred to the examiners of petitions for private bills. Two clear days' notice is given of the examination of every such bill, and memorials complaining of non-compliance with the Standing Orders may be deposited before twelve o'clock on the day preceding that appointed by the examiner. If the examiner report that the Standing Orders have been complied with, or that no Standing Orders are applicable, the bills are read a second time. Not less than three clear days, nor more than seven, are required to elapse between the first and second reading, unless the bill has been referred to the examiners, in which case it is not to be read a second time later than seven clear days after his report, or that of the Standing Orders Committee. Three clear days' notice of the second reading is to be given, but not until the day after the first reading. After the second reading, every such bill, except a divorce bill, is referred to the committee of selection, by whom it is committed to the chairman of ways and means and two other members, of whom one at least is not to be locally or otherwise interested in the bill, or one member and a referee. There must be three clear days between the second reading of a name or ordinary estate bill and the sitting of the committee, and six clear days if the estate bill relate to crown, church, or corporation property, or property held in trust for public or charitable purposes. One clear day's notice is given, by the clerk to the committee of selection, of the sitting of the committee. Amendments are rarely made to such bills, after they have been received from the Lords; and on being reported from the committee they are, therefore, ordered to be read a third time. One clear day's notice of such third reading is to be given, but not until the day after the bill has been ordered to be read a third time. Many of these bills, however, are received by the Commons at so late a period of the session, that it becomes necessary to suspend the Standing Orders, and

Second reading and commitment.

Notices and intervals.

Standing Orders suspended.

to permit them to proceed without the usual intervals and notices.

Divorce bills in the Commons.

All that need be said of divorce bills in the Commons, is that at the commencement of each session a committee is nominated, consisting of nine members, of whom three are a quorum, and is denominated "The select committee on divorce bills." To this committee all divorce bills are committed after the second reading. There are several orders applicable to such bills, which need not be enumerated.

Fees remitted.

In the case of Chippendall's divorce bill, in 1850, the committee made a special report, recommending the remission of the fees on account of the poverty of the promoter; and their report was agreed to by the house.[1] On the 13th June 1854, Berens' divorce bill had been read a third time and passed, when intelligence was received of the death of Mr. Berens, the husband and petitioner for the bill. On the following day the proceedings upon the third reading were ordered to be null and void. Another day was named for the third reading, but the bill was subsequently allowed to drop.

Death of petitioner for bill.

Divisions of private bills.

All private bills, during their progress in the Commons, are known by the general denomination of private bills: but in the Lords the several bills, which are divided into the first and second class, are now distinguished in the Standing Orders as local bills; and estate, divorce, naturalization, name, and other bills not specified as local bills, are termed personal bills. After they have received the royal assent, private bills are divided into three classes: 1. Local and personal, declared public; 2. Private, printed by the Queen's printers; and 3. Private, not printed.

1. Local and personal acts.

1. Every local and personal Act passed before the year 1851, contained a clause, declaring that it "shall be a public Act, and shall be judicially taken notice of as such:" but by Lord Brougham's Act of 1850, for shortening the language

[1] 105 Com. J. 563; and see *infra*, p. 901.

of Acts of Parliament, it is enacted that every Act "shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such, unless the contrary be expressly provided and declared by such Act,"[1] and the "public clause" has consequently been omitted from all local and personal Acts since that time. Acts of this class receive the royal assent in the form of public Acts. The practice of declaring particular Acts of a private nature to be "public Acts," commenced in the reign of William and Mary, and was soon extended to nearly all private Acts, by which felonies were created, penalties inflicted, or tolls imposed.[2] Such Acts were printed with the other statutes of the year,[3] and were not distinguishable from public Acts, except by the character of their enactments: but since 1798 they have been printed in a separate collection, and are known as local and personal Acts. With the exception of inclosure, or inclosure and drainage Acts, all the bills of the two classes so often referred to are included in this category, and have contained the public clause. In some special cases where local and personal Acts have been of an unusually public character, they have not only contained the ordinary public clause, but have been printed amongst the public general Acts.[4]

Public acts of a local character.

Since 1867 a considerable class of Acts, previously included in the collection of the public general Acts, have been transferred to the local and personal Acts. These were Acts for the confirmation of provisional orders, and for various local purposes. This change was introduced with a view to reduce the inconvenient bulk of the statute book, and has been carried out as far as circumstances will admit.

2. Private acts printed.

2. From 1798 to 1815, the private Acts, not declared public, were not printed by the Queen's printers, and could only be given in evidence by obtaining authenticated copies

[1] 13 Vict. c. 21, s. 7.

[2] Preface to Spiller's Index to the Statutes.

[3] In the black letter edition of the public general acts.

[4] Manchester Stipendiary Magistrate Acts, 53 Geo. III. c. 72; 7 & 8 Vict. c. 30. Manchester Warehousing Act, 7 & 8 Vict. c. 31.

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from the statute rolls in the Parliament Office: but since 1815, the greater part of the private Acts have been printed by the Queen's printers, and have contained a clause declaring that a copy so printed "shall be admitted as evidence thereof by all judges, justices, and others." These consist, almost exclusively, of inclosure, or inclosure and drainage, and estate Acts. Since Lord Brougham's Act, this evidence clause has been retained, with the addition of an enactment that the "Act shall not be deemed a public Act."

3. Private acts not printed.

3. The last class of Acts are those which still remain unprinted: they consist of name, naturalization, divorce, and other strictly personal Acts, of which a list is always printed by the Queen's printers, after the titles of the other private Acts.

Legal distinctions.

A local and personal Act, declared public, may be used for all purposes, as a public general statute. It may be given in evidence upon the general issue, and will be judicially noticed, without being formally set forth. Nor is it necessary to show that it was printed by the Queen's printers, as the words of the public clause do not require it, and the printed copy of a public Act is supposed to be used merely for the purpose of refreshing the memory of the judge, who has already been acquainted with its enactments. A private Act, on the contrary, whether printed or not, must be specially pleaded, and given in evidence like any other record. If printed, the copy printed by the Queen's printers is received as an examined copy of the record; if not printed, an authenticated copy is produced from the statute rolls in the Parliament office.[1]

Queen's printers' copies.

By the Act 8 & 9 Vict. c. 113, s. 3, it is enacted "that all copies of private and local and personal Acts of Parliament not public Acts, if purporting to be printed by the Queen's printers," "shall be admitted as evidence thereof by all courts, judges, justices, and others, without any proof being given that such copies were so printed."

[1] 2 Phillipps & Amos, 611.

CHAPTER XXIX.

FEES PAYABLE BY THE PARTIES PROMOTING OR OPPOSING PRIVATE BILLS. TAXATION OF COSTS OF PARLIAMENTARY AGENTS, SOLICITORS AND OTHERS.

Fees payable on private bills.

THE fees which are chargeable upon the various stages of private bills, and are payable by the several parties promoting or opposing such bills, have been settled in both houses. The tables of fees are well known to parliamentary agents, and to suitors; they are published in the Standing Orders of the Commons, and in the House of Lords they are separately printed, and are readily accessible to parties interested.

It is declared by the Commons, "That every bill for the particular interest or benefit of any person or persons, whether the same be brought in upon petition or motion, or report from a committee, or brought from the Lords, hath been and ought to be deemed a private bill, within the meaning of the table of fees;" and that "the fees shall be charged, paid, and received at such times, in such manner, and under such regulations as the Speaker shall from time to time direct."[1]

How collected,

In both houses there are officers whose special duty it is to take care that the fees are properly paid by the agents, who are responsible for the payment of them.[2] If a parliamentary agent, or a solicitor acting as agent for any bill or petition, be reported as a defaulter in the payment of the fees of the house, the Speaker orders that he shall not be permitted to enter himself as a parliamentary agent, in any future proceeding, until further directions have been given. In the House of Commons the whole of the fees were formerly collected and carried to a fee fund, whence the salaries and

[1] Table of fees.

[2] See *supra*, p. 780.

expenses of the establishment were partly defrayed; the balance being supplied from the consolidated fund: but by the 12 & 13 Vict. c. 72, all monies arising from the fees of the house are carried to the consolidated fund; and the officers are paid from the public revenues. In the House of Lords, the fees upon private bills have also been appropriated to a general fee fund. and applied.

In the case of Chippendall's Divorce Bill in 1850, the promoter petitioned to be allowed to prosecute the bill *in formâ pauperis*, and in both houses this privilege was conceded to him, on proof of his inability to pay the fees. The committee on the bill in the Commons, to whom his petition had been referred, distinguished his case from that of the suitor for any other kind of bill, and considered that the remission of the fees would not afford a precedent in other parliamentary proceedings.[1] Divorce bill *in formâ pauperis.*

In pursuance of an address of the House of Commons, in 1829, the fees payable upon all bills for continuing or amending Turnpike Road Acts, which receive the royal assent, are discharged by the Treasury.[2] But such Acts are now usually continued by a General Turnpike Act Continuance Bill. Turnpike road continuance acts.

The last matter which need be mentioned in connection with the passing of private bills, is the taxation of the costs incurred by the promoters, opponents, and other parties. Prior to 1825, no provision had been made by either house, as in other courts, for the taxation of costs incurred by suitors in Parliament. In 1825, an Act was passed to establish such a taxation in the Commons;[3] and in 1827, another Act was passed, to effect the same object in the Lords.[4] Both these Acts, however, were very defective, and have since been repealed. By the present "House of Commons" and "House Taxation of costs.

[1] See report, 25th July 1850; 105 Com. J. 563. In 1604, counsel was assigned to a party, in a private bill, *in formâ pauperis*, he "being a very poor man." 1 Ib. 241.

[2] 84 Ib. 90.

[3] 6 Geo. IV. c. 69.

[4] 7 & 8 Geo. IV. c. 64.

of Lords Costs Taxation Acts,"[1] a regular system of taxation has been established in both houses, and every facility is afforded for ascertaining the reasonable and proper costs arising out of every application to Parliament.

Taxing officers.

In each house there is a taxing officer, having all the necessary powers of examining the parties and witnesses on oath, and of calling for the production of books or writings in the hands of either party to the taxation.

Lists of charges.

Lists of charges have been prepared, in pursuance of these Acts, in both houses, defining the charges which parliamentary agents, solicitors, and others will be allowed to charge for the various services usually rendered by them.[2]

Applications for taxation.

Any person upon whom a demand is made by a parliamentary agent or solicitor, for any costs incurred in respect of any proceedings in the house, or in complying with its Standing Orders, may apply to the taxing officer for the taxation of such costs. And any parliamentary agent or solicitor who may be aggrieved by the non-payment of his costs, may apply, in the same manner, to have his costs taxed, preparatory to the enforcement of his claim.

To be within six months after delivery of bill.

The client, however, is required by the Act to make this application within six months after the delivery of the bill. But the Speaker in the Commons, or the clerk of the Parliaments in the Lords, on receiving a report of special circumstances from the taxing officer, may direct costs to be taxed after the expiration of the six months.

Costs of both houses taxed together.

The taxing officer of either house is enabled to tax the whole of a bill brought before him for taxation, whether the costs relate to the proceedings of that house only, or to the proceedings of both houses; and also other general costs incurred in reference to the private bill or petition. And each taxing officer may request the other, or the proper officer of any other court, to assist him in taxing any portion of a

[1] 10 & 11 Vict. c. 69; 12 & 13 Vict. c. 78.

[2] These lists are printed, for distribution to all persons who may apply for them.

bill of costs. And the proper officers of other courts may, in the same manner, request their assistance in the taxation of parliamentary costs.

Certificate to have the effect of a warrant to confess judgment.

In the Commons the taxing officer reports his taxation to the Speaker, and in the Lords to the clerk of the Parliaments. If no objection be made within twenty-one days, either party may obtain from the Speaker or clerk of the Parliaments, as the case may be, a certificate of the costs allowed, which in any action brought for the recovery of the amount so certified, will have the effect of a warrant of attorney to confess judgment, unless the defendant shall have pleaded that he is not liable to the payment of the costs.

Powers of taxing officer extended.

By the House of Commons Costs Taxation Act, 1879, the powers of the taxing officer were extended to costs in respect of provisional orders and certificates, and bills promoted by public authorities, and opposition to public bills. If requested by a Secretary of State, or by the Local Government Board, he is also required to tax costs incurred in respect of any provisional order or certificate.

APPENDIX.

I.

Proclamation for assembling Parliament on a Day earlier than that to which it stood Prorogued.

By the Queen.

A Proclamation.

Victoria, R.

Whereas our Parliament stands prorogued to Thursday the fourteenth day of December next; and whereas, for divers weighty and urgent reasons, it seems to us expedient that our said Parliament shall assemble and be holden sooner than the said day: We do, by and with the advice of our Privy Council, hereby proclaim and give notice of our royal intention and pleasure that our said Parliament, notwithstanding the same now stands prorogued, as hereinbefore mentioned, to the said fourteenth of December next, shall assemble and be holden for the despatch of divers urgent and important affairs, on Tuesday the twelfth day of December next; and the Lords Spiritual and Temporal, and the Knights, Citizens, and Burgesses, and the Commissioners for Shires and Burghs of the House of Commons, are hereby required and commanded to give their attendance accordingly, at Westminster, on the said twelfth day of December, one thousand eight hundred and fifty-four.

Given at our Court at Windsor, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty-four, and in the eighteenth year of our reign.

God save the Queen.

II.

Proclamation for assembling Parliament for the despatch of Business, upon a Day already appointed for its assembling.

By the Queen.

A Proclamation.

Victoria, R.

Whereas our Parliament stands prorogued to Thursday the seventeenth day of January next: We, by and with the advice of our Privy Council, hereby issue our Royal Proclamation, and publish and declare our royal will and pleasure, that the said Parliament shall, on the said Thursday the seventeenth day of January, one thousand eight hundred and seventy-eight, assemble and be holden for the despatch of divers urgent and important affairs; and the Lords Spiritual and Temporal, and the Knights, Citizens and Burgesses, and the Commissioners for Shires and Burghs of the House of Commons, are hereby required and commanded to give their attendance accordingly, at Westminster, on the said Thursday the seventeenth day of January, one thousand eight hundred and seventy-eight.

Given at our Court at Windsor, this twenty-second day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and in the forty-first year of our reign.

God save the Queen.

III.

Form of Certificate to authorize the Speaker to issue a Warrant for a New Writ during a Recess.

Schedule of 24 *Geo.* 3, *sess.* 2, *c.* 26, *and* 21 *&* 22 *Vict. c.* 110.

We whose names are underwritten, being two members of the House of Commons, do hereby certify, that *M. P.*, late a member of the said house, serving as one of the knights of the shire for the county of [*or as the case may be*] died upon the day of ; *or*, is become a peer of Great Britain, and that a writ of summons hath been issued under the great seal of Great Britain to summon him to Parliament [*as the case may be*], *or* has accepted the office of [*as the case may be*], and has been gazetted thereto in the Gazette, dated the day of , and has thereby vacated his seat; and we give you this notice, to the intent that you may issue your warrant to the clerk of the Crown, to make out a new writ for the election of a knight to serve in Parliament for the said county of [*or as the case may be*] in the room of the said *M. P.*

Given under our hands this day of .

To the Speaker of the House of Commons.

Note.—That in case there shall be no Speaker of the House of Commons, or of his absence out of the realm, such certificate may be addressed to any one of the persons appointed according to the directions of the Act 24 Geo. 3.

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